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**1999**

# ***Illinois Register***

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## **Rules of Governmental Agencies**

Volume 23, Issue 36 — September 03, 1999

Pages 10,605 – 10,895

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Index Department  
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111 East Monroe Street  
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September 3, 1999    Volume 23, Issue 36

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## JOINT COMMITTEE ON ADMINISTRATIVE RULES

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**Editor's Note:** The Cumulative Index and Sections Affected Index will be printed on a quarterly basis. The printing schedule for the quarterly and annual indexes are as follows:

April 16, 1999 - Issue 16: Through	March 31, 1999
July 16, 1999 - Issue 29: Through	June 30, 1999
October 15, 1999 - Issue 42: Through	September 30, 1999
January 21, 2000 - Issue 3: Through	December 31, 1999 (Annual)

## REGISTER PUBLICATION SCHEDULE 1999

Issue #	Copy Due by 4:30 p.m.	Publication Date	Issue #	Copy Due by 4:30 p.m.	Publication Date
Issue 1	December 21, 1998	January 4, 1999 *	Issue 28	June 28	July 9
Issue 2	December 28	January 8	Issue 29	July 6 ***	July 16
Issue 3	January 4, 1999	January 15	Issue 30	July 12	July 23
Issue 4	January 11	January 22	Issue 31	July 19	July 30
Issue 5	January 19	January 29	Issue 32	July 26	August 6
Issue 6	January 25	February 5	Issue 33	August 2	August 13
Issue 7	February 1	February 16	Issue 34	August 9	August 20
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Issue 10	February 22	March 5	Issue 37	August 30	September 10
Issue 11	March 1	March 12	Issue 38	September 7 ***	September 17
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Issue 13	March 15	March 26	Issue 40	September 20	October 1
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Issue 18	April 19	April 30	Issue 44	October 25	November 5
Issue 19	April 26	May 7	Issue 45	November 1	November 12
Issue 20	May 3	May 14	Issue 46	November 8	November 19
Issue 21	May 10	May 21	Issue 47	November 15	November 29 *
Issue 22	May 17	May 28	Issue 48	November 22	December 3
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\* Monday following a state holiday.

\*\* Tuesday following a state holiday.

\*\*\* Since the state holiday is a Monday, the deadline is Noon on Tuesday.

## DEPARTMENT ON AGING

## NOTICE OF PROPOSED AMENDMENTS

1) Heading of the Part: Community Care Program

2) Code Citation: 89 Ill. Adm. Code 240

3) Section Numbers: Proposed Action:  
240.728 Amendment  
240.729

4) Statutory Authority: 20 ILCS 105/4.01(11) and 5.02

5) A Complete Description of the Subjects and Issues Involved: The purpose of this rulemaking is to update the Community Care Program maximum payment levels for homemaker and adult day services.

6) Will this proposed rule replace an emergency rule currently in effect? No

7) Does this rulemaking contain an automatic repeal date? No

8) Does this proposed amendment contain incorporations by reference? No

9) Are there any proposed amendments pending on this Part? No

10) Statement of Statewide Policy Objectives: N/A

11) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking: Interested persons may present their written comments concerning this rulemaking, within 45 days after the date of this issue of the *Illinois Register*, to:

Ms. Pamela W. Balmer, Assistant  
Office of General Counsel  
Illinois Department on Aging  
421 East Capitol Avenue #100  
Springfield, Illinois 62701-1789  
Attention: Service Maximum Increase

The rule amendments will have an impact on small businesses. In accordance with Sections 1-20 and 5-20 of the Illinois Administrative Procedure Act, any small business may present their comments to Ms. Pamela W. Balmer, at the above address.

Any small business (as defined in Section 1-75 of the Illinois Administrative Procedure Act) commenting on the rule amendment shall indicate their status as such, in writing, in their comments.

12) Initial Regulatory Flexibility Analysis:

A) Types of small businesses affected: Community Care Program Providers

## DEPARTMENT ON AGING

## NOTICE OF PROPOSED AMENDMENTS

B) Reporting, bookkeeping or other procedures required for compliance: Reporting, bookkeeping and other procedures that are presently required under the Community Care Program.

C) Types of professional skills necessary for compliance: The same skills as presently required.

13) Regulatory Agenda on which this rulemaking was summarized was: January 1999

The full text of the Proposed Amendments begins on the next page:

## DEPARTMENT ON AGING

## NOTICE OF PROPOSED AMENDMENTS

TITLE 89: SOCIAL SERVICES  
CHAPTER II: DEPARTMENT ON AGING

## PART 240

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## DEPARTMENT ON AGING

## NOTICE OF PROPOSED AMENDMENTS

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## DEPARTMENT ON AGING

## NOTICE OF PROPOSED AMENDMENTS

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## NOTICE OF PROPOSED AMENDMENTS

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## DEPARTMENT ON AGING

## NOTICE OF PROPOSED AMENDMENTS

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 240.1920 Contract Specific Variations  
 240.1925 Fixed Unit Rate of Reimbursement for Homemaker Service  
 240.1930 Fixed Unit Rates of Reimbursement for Adult Day Care Service and Transportation  
 240.1940 Case Management Fixed Unit Reimbursement Rates  
 240.1950 Adult Day Care Fixed Unit Reimbursement Rates  
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 240.2040 Minimum Direct Service Worker Costs for Homemaker Service  
 240.2050 Cost Categories for Homemaker Service

AUTHORITY: Implementing Section 4.02 and authorized by Section 4.01(1) of the Illinois Act on the Aging [20 ILCS 105/4.02 and 4.01(1)].

SOURCE: Emergency rules adopted at 4 Ill. Reg. 1, p. 67, effective December 20, 1979, for a maximum of 150 days; adopted at 4 Ill. Reg. 17, p. 151, effective April 25, 1980; amended at 4 Ill. Reg. 43, p. 86, effective October 15, 1980; emergency amendments at 5 Ill. Reg. 1900, effective February 18, 1981, for a maximum of 150 days; amended at 5 Ill. Reg. 12090, effective October 26, 1981; emergency amendments at 6 Ill. Reg. 8455, effective July 6, 1982, for a maximum of 150 days; amended at 6 Ill. Reg. 14953, effective December 1, 1982; amended at 7 Ill. Reg. 8697, effective July 20, 1983; codified at 8 Ill. Reg. 2633; amended at 9 Ill. Reg. 1739, effective January 29, 1985; amended at 9 Ill. Reg. 10208, effective July 1, 1985; emergency amendments at 10 Ill. Reg. 5076, effective August 29, 1985, for a maximum of 150 days; amended at 10 Ill. Reg. 5076, effective March 15, 1986; recodified at 12 Ill. Reg. 7980; amended at 13 Ill. Reg. 11193, effective July 1, 1989; emergency amendments at 13 Ill. Reg. 13638, effective August 18, 1989, for a maximum of 150 days; amended at 13 Ill. Reg. 17327, effective November 1, 1989; amended at 14 Ill. Reg. 1233, effective January 12, 1990; amended at 14 Ill. Reg. 10732, effective July 1, 1990; emergency amendments at 15 Ill. Reg. 2838, effective February 1, 1991, for a maximum of 150 days; amended at 15 Ill. Reg. 10351, effective July 1, 1991; emergency amendments at 15 Ill. Reg. 14593, effective October 1, 1991, for a maximum of 150 days; emergency amendments at 15 Ill. Reg. 17398, effective November 15, 1991, for a maximum of 150 days; emergency amendments suspended at 16 Ill. Reg. 1744; emergency amendments modified in response to a suspension by the Joint Committee on Administrative Rules and reinstated at 16 Ill. Reg. 2943; amended at 15 Ill. Reg. 18568, effective December 13, 1991; emergency amendments at 16 Ill. Reg. 2630, effective February 1, 1992, for a maximum of 150 days; emergency amendments at

DEPARTMENT ON AGING

NOTICE OF PROPOSED AMENDMENTS

- g) Individuals scoring from 79 thru 87 points shall be eligible for services costing no less than \$1 and not to exceed \$1,618+777 monthly.
- h) Individuals scoring from 88 thru 100 points shall be eligible for services costing no less than \$1 and not to exceed \$1,887+598 monthly.

(Source: Amended at 23 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

Section 240.729 Maximum Payment Levels for Adult Day Care Service

Applicable service maximum levels for Community Care Program clients who, based on an approved plan of care, receive adult day care service are:

DON SCORE RANGE	SERVICE MAXIMUM LEVEL
29-32	\$ 280 ±36
33-36	607 598
37-45	836 788
46-56	778 828
57-67	1,113 944
68-78	1,189+667
79-87	1,618+777
88-100	1,887+598

(Source: Amended at 23 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

DEPARTMENT ON AGING

NOTICE OF PROPOSED AMENDMENTS

- 16 Ill. Reg. 2901, effective February 6, 1992, to expire June 30, 1992; emergency amendments at 16 Ill. Reg. 4069, effective February 28, 1992, to expire June 30, 1992; amended at 16 Ill. Reg. 11403, effective June 30, 1992; emergency amendments at 16 Ill. Reg. 11625, effective July 1, 1992, for a maximum of 150 days; amended at 16 Ill. Reg. 11731, effective June 30, 1992; emergency rule added at 16 Ill. Reg. 12615, effective July 23, 1992, for a maximum of 150 days; modified at 16 Ill. Reg. 16680; amended at 16 Ill. Reg. 14565, effective September 8, 1992; amended at 16 Ill. Reg. 18767, effective November 27, 1992; amended at 17 Ill. Reg. 224, effective December 29, 1992; amended at 17 Ill. Reg. 6090, effective April 7, 1993; amended at 18 Ill. Reg. 609, effective February 1, 1994; emergency amendment at 18 Ill. Reg. 5348, effective March 22, 1994, for a maximum of 150 days; amended at 18 Ill. Reg. 13375, effective August 19, 1994; amended at 19 Ill. Reg. 9085, effective July 1, 1995; emergency amendment at 19 Ill. Reg. 10186, effective July 1, 1995, for a maximum of 150 days; emergency amendment at 19 Ill. Reg. 12693, effective August 25, 1995, for a maximum of 150 days; amended at 19 Ill. Reg. 16031, effective November 20, 1995; amended at 19 Ill. Reg. 16523, effective December 1, 1995; amended at 20 Ill. Reg. 1493, effective January 10, 1996; emergency amendment at 20 Ill. Reg. 5389, effective March 22, 1996, for a maximum of 150 days; amended at 20 Ill. Reg. 8955, effective July 1, 1996; amended at 20 Ill. Reg. 10597, effective August 1, 1996; amended at 21 Ill. Reg. 887, effective January 10, 1997; amended at 21 Ill. Reg. 6183, effective May 15, 1997; amended at 21 Ill. Reg. 12418, effective September 1, 1997; amended at 22 Ill. Reg. 3415, effective February 1, 1998; amended at 23 Ill. Reg. 2496, effective February 1, 1999; amended at 23 Ill. Reg. 3642, effective May 1, 1999; amended at 23 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

SUBPART G: NON-FINANCIAL REQUIREMENTS

Section 240.728 Maximum Payment Levels for Homemaker Service

Maximum monthly service dollars are calculated according to the applicant's total Determination of Need score. These maximum monthly service dollars will be adjusted by the Department to be consistent with any future unit rate adjustments for Community Care Program (CCP) providers.

- a) Individuals scoring from 29 thru 32 points shall be eligible for services costing no less than \$1 and not to exceed \$250±31 monthly.
- b) Individuals scoring from 33 thru 36 points shall be eligible for services costing no less than \$1 and not to exceed \$414±59 monthly.
- c) Individuals scoring from 37 thru 45 points shall be eligible for services costing no less than \$1 and not to exceed \$630±53 monthly.
- d) Individuals scoring from 46 thru 56 points shall be eligible for services costing no less than \$1 and not to exceed \$786±65 monthly.
- e) Individuals scoring from 57 thru 67 points shall be eligible for services costing no less than \$1 and not to exceed \$1,030±43 monthly.
- f) Individuals scoring from 68 thru 78 points shall be eligible for services costing no less than \$1 and not to exceed \$1,189±667 monthly.



## DEPARTMENT OF COMMERCE AND COMMUNITY

## NOTICE OF PROPOSED RULES

- 1) Heading of the Part: Economic Development through a Growing Economy Program (EDGE)
- 2) Code Citation: 14 Ill. Adm. Code 527
- 3) 

<u>Section Numbers:</u>	<u>Proposed Action:</u>
527.10	New Section
527.20	New Section
527.30	New Section
527.40	New Section
527.50	New Section
527.60	New Section
527.70	New Section
527.80	New Section
527.90	New Section
527.100	New Section
527.110	New Section

- 4) Statutory Authority: Implementing Section 5-15 and authorized by Section 5-80 of the Economic Development for a Growing Economy Tax Credit Act [35 ILCS 10/5-15 and 5-80] (see Public Act 91-476).

- 5) A Complete Description of the Subjects and Issues Involved: This new proposed rulemaking will help the State to compete for the attraction of firms that offer good jobs for Illinois workers by offering those firms that meet the eligibility criteria a tax credit. Firms which create at least 25 new jobs and invest at least \$5,000,000 in capital improvements in Illinois would be eligible for an Economic Development for a Growing Economy (EDGE) tax credit for up to 10 years.

- 6) Will these rules replace emergency rules currently in effect? Yes

- 7) Does this rulemaking contain an automatic repeal date? No

- 8) Do these proposed rules contain incorporations by reference? No

- 9) Are there any rules pending on this Part? No

- 10) Statement of Statewide Policy Objectives: This rulemaking does not create or expand a State mandate as defined in Section 3(b) of the State Mandates Act [30 ILCS 805/3(b)].

- 11) Time, Place and Manner in which interested persons may comment on this proposed rulemaking:

Mr. Eric Rinehart, Acting Manager  
Policy Development, Planning and Research  
Department of Commerce and Community Affairs

## DEPARTMENT OF COMMERCE AND COMMUNITY

## NOTICE OF PROPOSED RULES

620 East Adams Street, 6th Floor  
Springfield, Illinois 62701  
(217) 524-5696  
T.D.D.: (217) 785-6055

12) Initial Regulatory Flexibility Analysis:

- A) Types of small businesses and small municipalities affected: Businesses which create at least 25 new jobs and invest at least \$5,000,000 in capital improvements would be eligible to be considered for the EDGE tax credit. To determine if they qualify for the EDGE tax credit from DCCA, small businesses will be required to submit an application to the Department. Small municipalities and not-for-profits would not qualify for the tax credit; they will not be affected by the rule.

- B) Reporting, bookkeeping or other procedures required for compliance: Firms would possess the minimum bookkeeping and reporting requirements needed for compliance with the EDGE Act.

- C) Types of professional skills necessary for compliance: Applicants would already possess the necessary professional skills for compliance.

- 13) Regulatory Agenda on which this rulemaking was summarized: July 1999

The full text of the Proposed Rules is identical to the text of the Emergency Rules appearing in this issue of the *Illinois Register* on page **10614**.

## STATE BOARD OF EDUCATION

## NOTICE OF PROPOSED REPEALER

## 1) Heading of the Part: Special Education

## 2) Code Citation: 23 Ill. Adm. Code 226

3) Section Numbers: Proposed Action:

226.5	Repeal	226.415	Repeal
226.10	Repeal	226.420	Repeal
226.20	Repeal	226.425	Repeal
226.30	Repeal	226.430	Repeal
226.40	Repeal	226.435	Repeal
226.110	Repeal	226.440	Repeal
226.115	Repeal	226.445	Repeal
226.120	Repeal	226.445	Repeal
226.125	Repeal	226.450	Repeal
226.130	Repeal	226.505	Repeal
226.135	Repeal	226.510	Repeal
226.140	Repeal	226.515	Repeal
226.145	Repeal	226.520	Repeal
226.150	Repeal	226.525	Repeal
226.155	Repeal	226.530	Repeal
226.160	Repeal	226.532	Repeal
226.210	Repeal	226.535	Repeal
226.215	Repeal	226.538	Repeal
226.220	Repeal	226.540	Repeal
226.225	Repeal	226.542	Repeal
226.230	Repeal	226.544	Repeal
226.240	Repeal	226.545	Repeal
226.250	Repeal	226.548	Repeal
226.260	Repeal	226.550	Repeal
226.270	Repeal	226.552	Repeal
226.280	Repeal	226.555	Repeal
226.290	Repeal	226.558	Repeal
226.310	Repeal	226.560	Repeal
226.315	Repeal	226.562	Repeal
226.320	Repeal	226.564	Repeal
226.325	Repeal	226.566	Repeal
226.330	Repeal	226.568	Repeal
226.335	Repeal	226.570	Repeal
226.340	Repeal	226.575	Repeal
226.350	Repeal	226.578	Repeal
226.355	Repeal	226.580	Repeal
226.360	Repeal	226.585	Repeal
226.365	Repeal	226.590	Repeal
226.370	Repeal	226.595	Repeal
226.375	Repeal	226.600	Repeal
226.380	Repeal	226.605	Repeal
226.385	Repeal	226.610	Repeal
226.410	Repeal	226.615	Repeal
		226.620	Repeal
		226.622	Repeal
		226.625	Repeal
		226.632	Repeal
		226.633	Repeal

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## NOTICE OF PROPOSED REPEALER

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226.636 Repeal  
 226.640 Repeal  
 226.645 Repeal  
 226.670 Repeal  
 226.675 Repeal  
 226.692 Repeal  
 226.695 Repeal  
 226.710 Repeal  
 226.720 Repeal  
 226.730 Repeal  
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 226.1115 Repeal  
 226.1120 Repeal  
 226.1125 Repeal  
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 226.1135 Repeal  
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 226.1145 Repeal  
 226.1150 Repeal

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226.1155 Repeal  
 226.1160 Repeal  
 226.1170 Repeal  
 226.1175 Repeal  
 226.1180 Repeal  
 226.1185 Repeal  
 226.1190 Repeal  
 226.1195 Repeal

4) Statutory Authority: 105 ILCS 5/Art. 14 and 2-3.5.

5) A Complete Description of the Subjects and Issues Involved: The 1997 reauthorization of the federal Individuals with Disabilities Education Act (IDEA) has created a need for numerous revisions to the State Board's rules for special education. The degree of change is so great as to warrant the repeal of the existing Part and the proposal of a comprehensive new set of rules on this subject.

6) Will this rulemaking replace any emergency rulemaking currently in effect?  
 No

7) Does this rulemaking contain an automatic repeal date? No

8) Does this rulemaking contain incorporations by reference? The rules do not contain an incorporation by reference under Section 5-75 of the Illinois Administrative Procedure Act.

9) Are there any other proposed rulemakings pending on this Part? As indicated above, an entirely new Part 226 is being proposed in this issue.

10) Statement of Statewide Policy Objectives: This rulemaking will not create or enlarge a state mandate.

11) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Written comments may be submitted within 60 days of the publication of this notice to:

Sally Vogl  
 Agency Rules Coordinator  
 Illinois State Board of Education  
 100 North First Street  
 Springfield, Illinois 62777  
 (217) 782-3950

12) Initial Regulatory Flexibility Analysis:

a) Types of small businesses, small municipalities and not for profit corporations affected: None



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B) Reporting, bookkeeping or other procedures required for compliance:  
None

C) Types of professional skills necessary for compliance: None

13) Regulatory Agenda on which this rulemaking was summarized. This rule was not included on either of the 2 most recent agendas because: It had already been included in an agenda shortly after the federal legislation was reauthorized.

The full text of the Proposed Repealer begins on the next page:

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TITLE 23: EDUCATION AND CULTURAL RESOURCES

SUBTITLE A: EDUCATION

CHAPTER I: STATE BOARD OF EDUCATION

SUBCHAPTER f: INSTRUCTION FOR SPECIFIC STUDENT POPULATIONS

PART 226

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226.5

Terms Defined

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Comprehensive Program of Special Education  
Cooperative Special Education Programs  
Rights of Children Requiring Special Education-Exclusion

SUBPART C: THE ESTABLISHMENT AND ADMINISTRATION OF SPECIAL EDUCATION

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Educational Needs to be Met  
Continuum of Program Options  
Ages for Which Programs are to be Available  
Least Restrictive Environment  
Facilities for Classes for Handicapped  
Written Policies for Handicapped Students' Records  
Director of Special Education  
Supervision  
Role of Local District Administrator  
Responsibilities to be in Writing  
Approval of Programs and Services Not in Compliance With This Part

SUBPART D: SPECIAL EDUCATION INSTRUCTIONAL  
PROGRAMS AND RESOURCE PROGRAMS

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226.220  
226.225  
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Curriculum for Instructional Programs  
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Integration of Student Into Standard Program  
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SUBPART E: SPECIAL EDUCATION RELATED SERVICES

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 226.260 Other Related Services  
 226.270 Student Based Objectives  
 226.280 Specific Objectives  
 226.290 Time Spent on Behalf of Students

## SUBPART F: PREVOCATIONAL PROGRAM

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 226.310 Provision of Prevocational Programs  
 226.315 Determination of Need for Prevocational Program  
 226.320 Vocational Plan  
 226.325 Community Work Experiences  
 226.330 Time Spent in Community Work Experiences  
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 226.350 Content of Home and Hospital Programs  
 226.355 To Whom Provided  
 226.360 Commencement  
 226.365 Amount of Instruction and Related Services  
 226.370 Scheduling  
 226.375 Summer Instructional Service  
 226.380 Conferences to Facilitate Student's Return  
 226.385 Improper Use of Home and Hospital Program

## SUBPART H: STATE OPERATED OR PRIVATE PROGRAMS

Section  
 226.410 Referral to State or Private Facilities  
 226.415 Availability of Community Resources  
 226.420 Residential Placement  
 226.425 District's Responsibility to Locate Alternate Programs  
 226.430 Local District Responsible for Payment When Private Facility is Utilized  
 226.435 Annual Approval of Private Placements  
 226.440 Agreement Between Local School District and Private Facility  
 226.442 Supportive Data to be Maintained  
 226.445 Transportation and Other Services  
 226.450 Monitoring of Student Progress by School District  
 226.460 Annual Transportation (Repealed)

## SUBPART I: IDENTIFICATION, EVALUATION AND PLACEMENT

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 226.505 Communication of Special Education Programs to Public  
 226.510 Child Find Activities  
 226.515 Case Study Evaluation Process  
 226.520 Notification to Parents of Exceptional Children  
 226.525 Parental Consent  
 226.530 Parental Objection  
 226.532 Determination of Communication Mode(s) and Cultural Background  
 226.535 Case Study Evaluation Components  
 226.538 Incomplete Case Study Evaluation  
 226.540 Case Study to be Nondiscriminatory  
 226.542 Use of Outside Study  
 226.544 Independent Educational Evaluation  
 226.545 Home/Hospital Services Eligibility  
 226.548 Speech and Language Case Study Conclusions  
 226.550 Formulation of Program and Service Options  
 226.552 Characteristics Determining Eligibility for Special Education  
 226.555 Determination of Recommendations for Special Education and Related Services Eligibility  
 226.558 Results and Recommendations to be in Writing  
 226.560 Development of IEP and Placement Decision  
 226.562 IEP Content and Parental Access  
 226.564 Authority of School Board to Place Students  
 226.566 Completion to be in 60 School Days  
 226.568 Notice to Parents Before Placement  
 226.570 Parents' Response to Notice of Proposed Placement  
 226.572 Parents' Objection to Proposed Placement (Repealed)  
 226.575 Timeline for Placement  
 226.578 Annual Review of Child Status  
 226.580 Notice to Parents Regarding Evaluation  
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 226.590 Written Notice to Parents Prior to Change in Placement  
 226.595 Termination of Special Education Services

## SUBPART J: IMPARTIAL DUE PROCESS HEARINGS

Section  
 226.600 Calculation of Timelines  
 226.605 Request for Hearing  
 226.610 Information to Parents Concerning Right to Hearing  
 226.612 Request for Hearing to be Made to Superintendent (Repealed)  
 226.615 Procedure for Request  
 226.620 Denial of Hearing Request  
 226.622 Qualifications, Training, and Service of Impartial Due Process Hearing Officers  
 226.625 Appointment of Impartial Due Process Hearing Officer  
 226.630 Purpose of Hearing (Repealed)  
 226.631 Removal of Registered Hearing Officers (Repealed)

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226.632	Scheduling the Hearing and Pre-Hearing Conference
226.633	Conducting the Pre-Hearing Conference
226.635	Hearings Open to Public and to Child Who is Subject (Repealed)
226.636	Rights of the Parties Prior to the Hearing
226.640	Rights of the Parties During the Hearing
226.645	Powers and Duties of Hearing Officer
226.650	Hearing Concerning Any Other Controversy (Repealed)
226.655	Local School District's Responsibility (Repealed)
226.660	Cross-Examination (Repealed)
226.665	Rules of Evidence Not Applicable (Repealed)
226.670	Record of Proceedings
226.675	Decision of Hearing Officer; Clarification
226.680	Filing of an Appeal (Repealed)
226.682	Filing of Administrative Record (Repealed)
226.684	Placement of the Child Pending Completion of a Level II Review (Repealed)
226.685	State Level Review (Repealed)
226.688	Oral Arguments and Extensions of Time (Repealed)
226.690	Timeliness and Finality of Reviewing Officer's Decision (Repealed)
226.692	Monitoring and Enforcement of Decisions; Notice of Funding
226.695	Ineligibility
226.699	Reporting of Decisions
226.698	Enforcement of State Superintendent's Decision (Repealed)

## SUBPART K: SURROGATE PARENTS

Section	Surrogate Parents
226.710	Contacting Parents of Child
226.720	Appointment of Surrogate Parent
226.740	Notice to School District Concerning Surrogate Parent
226.750	Expenses for Surrogate Parent
226.760	Notification that Surrogate Parent is Not Needed
226.770	Replacement by Natural Parent
226.780	Immunity of Surrogate Parent

## SUBPART L: SPECIAL EDUCATION PERSONNEL

Section	Employment of Sufficient and Trained Personnel
226.810	Qualifications of Professional Instructional Personnel
226.820	Qualifications of Other Professional Personnel
226.830	Qualified Bilingual Specialists
226.840	Qualifications of Directors and Assistant Directors
226.850	Qualifications of Supervisory Personnel
226.860	Qualifications of Chief Administrator
226.870	Necessary Noncertified Personnel
226.880	Function of Special Education Personnel

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226.890	Personnel Development Program
Section	SUBPART M: SPECIAL TRANSPORTATION
226.910	Eligibility for Transportation
226.920	Vehicles Used
226.930	Training of Personnel
226.935	Provision for Transportation
226.938	Change in Mode of Transportation
226.940	Scheduling of Transportation
226.950	Transportation and Instructional Schedule
226.960	Transportation to a Residential School
Section	SUBPART N: EVALUATION OF SPECIAL EDUCATION
226.1010	Evaluation By State Board
226.1020	Bases of Evaluation
226.1030	Elements of State Board Evaluation
226.1040	Availability of State Board Evaluation
226.1050	Effect of Evaluation on School District
Section	SUBPART O: SPECIAL EDUCATION SERVICES FOR CHILDREN IN RESIDENTIAL CARE FACILITIES
226.1110	Equal Access for Children in Residential Care Facilities
226.1112	Definitions from Section 14-7.03
226.1115	Exclusions When Implementing Section 14-7.03
226.1120	Enrollment in District Required
226.1125	Requirements for Educational Program on Site of Orphanage or Children's Home
226.1130	Approval of Special Education Program at Orphanage or Children's Home
226.1135	Least Restrictive Environment
226.1140	IEP for All Children
226.1145	Compliance With This Part Subject to State Board of Education Evaluation
226.1150	Criteria for Eligibility of Children
226.1155	Resident Children Eligible for All Privileges
226.1160	Local District Policies Applicable
226.1170	Communications Regarding Child's Special Education
226.1175	Reimbursement
226.1180	Possible Waiver of Sections 226.1120 and 226.1150
226.1185	Computation of District's Reimbursement
226.1190	Preapproval Application
226.1195	Documentation of Expenses



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**AUTHORITY:** Implementing Article 14 and authorized by Section 2-3.6 of the School Code [105 ILCS 5/Art. 14 (see P.A. 89-652, effective August 14, 1996) and 2-3.6].

**SOURCE:** Adopted August 12, 1976; rules repealed and new emergency rules adopted at 2 Ill. Reg. 37, p. 29, effective September 1, 1978, for a maximum of 150 days; rules repealed and new rules adopted at 3 Ill. Reg. 5, p. 932, effective February 1, 1979; emergency amendment at 4 Ill. Reg. 38, p. 328, effective September 15, 1980, for a maximum of 150 days; amended at 5 Ill. Reg. 8021, effective July 22, 1981; amended at 6 Ill. Reg. 558, effective December 23, 1981; emergency amendment at 7 Ill. Reg. 6511, effective May 6, 1983, for a maximum of 150 days; emergency amendment at 7 Ill. Reg. 8949, effective July 15, 1983, for a maximum of 150 days; codified at 8 Ill. Reg. 6669; amended at 8 Ill. Reg. 7617, effective May 17, 1984; emergency amendment at 10 Ill. Reg. 3292, effective January 27, 1986, for a maximum of 150 days; emergency expired June 24, 1986; amended at 10 Ill. Reg. 18743, effective October 22, 1986; amended at 10 Ill. Reg. 19411, effective October 31, 1986; amended at 13 Ill. Reg. 15388, effective September 14, 1989; emergency amendment at 14 Ill. Reg. 11364, effective June 26, 1990, for a maximum of 150 days; emergency expired November 23, 1990; amended at 15 Ill. Reg. 40, effective December 24, 1990; amended at 16 Ill. Reg. 12868, effective August 10, 1992; emergency amendment at 17 Ill. Reg. 13622, effective August 3, 1993, for a maximum of 150 days; emergency expired December 31, 1993; amended at 18 Ill. Reg. 1930, effective January 24, 1994; amended at 18 Ill. Reg. 4685, effective March 11, 1994; amended at 18 Ill. Reg. 16318, effective October 25, 1994; amended at 19 Ill. Reg. 7207, effective May 10, 1995; amended at 20 Ill. Reg. 10908, effective August 5, 1996; amended at 21 Ill. Reg. 7655, effective July 1, 1997; Part repealed at 23 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

## SUBPART A: DEFINITION OF TERMS

## Section 226.5 Terms Defined

"Assistive Technology Device" means any item, piece of equipment or set of related products, however acquired or modified, that is used to increase, maintain, or improve the functional capabilities of children with disabilities.

"Assistive Technology Service" means any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device. The term includes:

The evaluation of the needs of a child with a disability, including a functional evaluation of the child in the child's customary environment;

Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by children with disabilities;

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Selecting, designing, fitting, customizing, adapting, applying, retaining, repairing, or replacing assistive technology devices;

Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;

Training or technical assistance for a child with a disability or, if appropriate, that child's family; and

Training or technical assistance for professionals (including individuals providing education or rehabilitation services), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of children with disabilities.

"Case Study" shall be defined as a series of in-depth multidisciplinary diagnostic procedures, conducted within an established time frame and designed to provide information about the child, the nature of the problems which are or will be affecting his/her educational development, and the type of intervention and assistance needed to alleviate these problems.

"Consent" means the parent(s):

has been informed of all necessary information

understands and agrees in writing to carrying out the activity for which consent is sought

understands that the granting of consent is voluntary on his or her part and may be revoked at any time.

"Continuum of Alternative Placements" means the availability of different types of educational environments, for example: regular classes, resource room classes, self-contained classes, day and residential special schools, home instruction, hospital instruction, institutional instruction, and community and other settings.

"Counseling Services" means services provided by qualified personnel such as: social workers, psychologists, guidance counselors, or other qualified personnel.

"Exceptional Children" means all children designated in Article 14 of the School Code. These children may exhibit disabilities ranging from very mild to very severe.

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"Individualized Education Program (IEP)" means a written statement for a child that provides at least a statement of: the child's present levels of educational performance; annual goals and short-term instructional objectives; specific special education and related services; the extent of participation in the regular education program; the projected dates for initiation of services; anticipated duration of services; appropriate objective criteria and evaluation procedures; and a schedule for annual determination of short-term objectives.

"Instructional Programs" means those activities which provide the principal elements of the child's educational development at any given time. These activities may include any or all of the following:

evaluation of the nature of the child's educational needs

amelioration of and compensation for visual, auditory, physical, speech or other impairments

development of language concepts and communication skills

educational experiences which are adjusted in content, emphasis, rate or location

modification of social skills or emotional adjustment.

For the purpose of this Part, an instructional program shall be considered as one in which the child spends 50% or more of his/her school day.

"Language Use Pattern" means the language or combination of languages which the child uses to conceptualize and communicate those conceptualizations.

"Least Restrictive Environment" means that, to the maximum extent appropriate, children with disabilities are educated with nondisabled children. Special classes, separate schooling or other removal of children from the regular educational environment occurs only when the nature or severity of the disability requires that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

"Multidisciplinary Conference" means deliberation among appropriate persons for the purpose of determining eligibility for special education, developing recommendations for special education placement, reviewing educational progress, or considering the continuation or termination of special education for an individual child.

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"Parent" means the natural or adoptive parent, a guardian, a person acting as a parent of a child, or surrogate parent who has been appointed by the State Board of Education.

"Parent Counseling and Training" means procedures utilized in assisting parents in understanding the special needs of their child and in providing parents with information about child development.

"Psychological Evaluation" means an individual evaluation of the child's functioning in the cognitive, psychomotor, social/emotional, and academic achievement or aptitude areas using appropriately validated formal and informal tests and evaluation material.

"Qualified Bilingual Specialist" means an individual who meets the certification or approval requirements described in Section 226-838 of this Part.

"Qualified Specialist" means those professional special education personnel who meet either the certification or approval requirements described in Subpart L of this Part.

"Reevaluation" means a series of diagnostic procedures which are performed in accordance with Section 226-535 of this Part for the purpose of determining a child's continued eligibility for special education.

"Referral" means a formal procedure, established by the local school district, by which a case study evaluation may be requested.

"Rehabilitation Counseling Services" means services provided by qualified personnel in individual or group sessions that focus on career development, employment preparation, achieving independence, and integration in the workplace and community of a student with a disability. The term also includes vocational rehabilitation services provided to students with disabilities by vocational rehabilitation programs funded under the Rehabilitation Act of 1973, as amended (29 U.S.C. 794).

"Related Services" means the developmental, corrective, and other supportive services which are required to assist a child with disabilities in benefiting from special education. Such services include: speech pathology and audiology, psychological services, physical and occupational therapy, recreation, early identification and assessment of disabilities in children, counseling and rehabilitation counseling services, and medical services for diagnostic or evaluation purposes. The term also includes transportation, school health services, social work services, and parent counseling and training.

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"Resource Programs" means specialized educational instructional services which are provided to the child for less than 50% of his or her school day.

"School Days" means those days on which school is officially conducted during the regularly established school year. (See Section 10-19 of the School Code [105 ILCS 5/10-19].)

"School Health Services" means services provided by a qualified school nurse or other qualified persons.

"Screening" means the process of reviewing all children in a given group with a set of criteria for the purpose of identifying certain individuals for evaluations who may be in need of special education.

"Social Developmental Study" means a compilation and analysis of information concerning those life experiences of the child, both past and present, which pertain to the child's problems and/or to the possible alleviation of those problems.

"Special Education" means those instructional and resource programs and related services, unique materials, physical plant adjustments, and other special educational facilities, such as instruction in other settings, described or implied in Article 14 of the School Code which, to meet the unique needs of children with disabilities, modify, supplement, support, or are in the place of the standard educational program of the public schools. The term includes speech pathology and vocational education.

"Special Education Placement" means the provision of specified public special education services, including and limited to a special education instructional program, resource program, special education related services, speech and language services, homebound services, hospital services, referral to a nonpublic program or a state-operated facility.

"Special School" means an educational setting which is established by the local school district exclusively to meet the needs of children with disabilities.

"Special Transportation" means those transportation services which are required because of the child's disability or the location of the special education program or related services, and which are in addition to the regular transportation services provided by the local school district.

"Standard Education Program" means the educational program generally offered by the local school district to the majority of its students.

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"Staff Conference" see definition of Multidisciplinary Conference in this Section.

"Surrogate Parent" means a person who acts in the educational behalf of a disabled child, in accordance with Subpart K of this Part.

"Transition Services" means a coordinated set of activities for a student, designed within an outcome-oriented process, that promotes movement from school to post-school activities, including postsecondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation. The plan for these must be based on the individual student's needs, preferences, and interests; address instruction, community experiences, the development of employment and other post-school adult living objectives, acquisition of daily living skills, and functional vocational evaluation; and identify the positions and agency affiliations of the persons responsible for the delivery of the services designated.

## SUBPART B: RESPONSIBILITY FOR SPECIAL EDUCATION

## Section 226.10 Cost to be Borne by Local School District

The local school district shall be responsible for providing and maintaining appropriate and effective educational programs, at no cost to the child's parents, for all exceptional children who are resident therein.

## Section 226.20 Comprehensive Program of Special Education

Each local school district, independently or in cooperation with other districts, shall provide a comprehensive program of special education for those exceptional children who are between the ages of three and twenty-one and who are resident in the district. Additionally, each local school district shall have a goal of providing full educational opportunity to all handicapped children birth to age three. A comprehensive program shall include:

- a) A viable organizational and financial structure.
- b) Systematic procedures for identifying and evaluating the need for special education and related services.
- c) A continuum of program options which incorporate appropriate instructional programs, resource programs, and related services.
- d) Qualified personnel, consistent with Subpart L of this Part, who can provide:
  - 1) Administration of the program
  - 2) Supervisory services
  - 3) Instructional programs
  - 4) Related services
  - 5) Transportation services



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- 6) Resource programs
- e) Appropriate and adequate facilities, equipment and materials.
- f) Functional relationships with those public and private agencies which can supplement or enhance the special education programs of the public schools.
- g) Interaction with parents and with other concerned persons which facilitates the educational development of exceptional children.
- h) Procedures for internal evaluation of the special education programs and services.
- i) Continuous planning for program growth and improvement based on internal and external evaluation.

**Section 226.30 Cooperative Special Education Programs**

Special education shall be established and conducted as an integral part of the local district educational effort.

- a) The local school district shall be considered the primary agent for the delivery of special education services to exceptional children.
- b) An organizational unit developed by joint agreement between districts shall be considered a service agent of the participating districts.
- c) The cooperative programs shall be directed by, and responsible to, all participating local districts.

**Section 226.40 Rights of Children Requiring Special Education--Exclusion**

The local school district shall be responsible for ensuring that those children who require special education services enjoy rights and privileges equal to those of all other children.

- a) No exceptional child between the ages of three and twenty-one may be permanently excluded from the public schools, either by direct action by the board of education, by indication of the district's inability to provide an educational program, or by informal agreement between parents and the school district to allow the child to remain without an educational program.
- b) A child who has been determined eligible for a special education instructional or resource program or related service shall not be expelled for behavior or a condition which is, or results from, an exceptional characteristic as defined in The School Code (Ill. Rev. Stat. 1989, ch. 122, pars. 14-1.02 and 14-1.03a) and this Part.

**SUBPART C: THE ESTABLISHMENT AND ADMINISTRATION OF SPECIAL EDUCATION****Section 226.110 Educational Needs to be Met**

Each local school district shall establish and maintain special education instructional programs, resource programs, and related services which meet the educational needs of children with the following exceptional characteristics:

- a) Auditory, visual, physical, or health impairment.

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- b) Speech or language impairment.
- c) Deficits in the essential learning processes of perception, conceptualization, memory, attention, or motor control.
- d) Deficits in intellectual development and mental capacity.
- e) Educational maladjustment related to social or cultural circumstances.
- f) Affective disorders or adaptive behavior which restricts effective functioning.

**Section 226.115 Continuum of Program Options**

Special education instructional programs, resource programs, and related services shall range along a continuum based on the nature and degree of the intervention. This continuum of program options shall include, but not be limited to:

- a) Standard Program with Modification--The child receives his/her basic educational experience through the standard program. However, these experiences are modified through:
  - 1) Additional or specialized education from the teacher
  - 2) Consultation to and with the teacher
  - 3) Provision of special equipment and materials
  - 4) Modification in the instructional program (e.g., multi-age placement, expectations, grading, etc.)
- b) Alternate Standard Program--The child receives his or her basic educational experiences in a standard program whose curricular content and educational methodology have been substantially changed. Such changes shall occur when the special education needs of a proportionately large, identifiable segment of the school population are not otherwise being met.
- c) Standard or Alternate Standard Program with Resource Programs or Related Services--The child receives his or her basic educational experiences through the standard, or alternate standard, program. However, these experiences are augmented by one or more resource programs or related services.
- d) Special Program--The child receives most of his or her basic educational experience through an instructional program in a special class, which is largely self-contained, or in a special school.
  - 1) Inclusion in those parts of the standard program which are appropriate.
  - 2) Provision of related services as needed.
- e) Cooperative Program--The child receives most of his or her educational experiences through either the standard or the special program of the public school. However, this is supplemented through work-experience programs or shared agency involvement.
- f) Home and Hospital Program--The child who is eligible for either standard or the special program, but who is unable to attend such programs, receives instructional or resource programs or related services in his or her home or in the hospital.
- g) State-Operated or Private Program--The child whose exceptional

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characteristics are so profound or complex that no special education program offered by the public schools can adequately or appropriately meet his or her needs is referred to either a state-operated or a private facility.

**Section 226.120 Ages for Which Programs are to be Available**

Special education instructional programs, resource programs, and related services, including diagnostic services, shall be available to exceptional children who are between the ages of three and twenty-one and who are enrolled in the local school district.

- a) When an exceptional child becomes three years old, the child shall be eligible for special education services, including private placement if required, at any time thereafter.
- b) An exceptional child who requires continued public school educational experience to facilitate his or her integration into society shall be considered eligible for such services until age twenty-one or upon successful completion of the secondary program. The child who becomes twenty-one during the school year shall be allowed to complete that year.
- c) An exceptional child who has satisfactorily completed a secondary program and has been assisted in locating further educational and vocational experiences as necessary shall be granted a diploma. Both parents and the student shall be made aware that eligibility for public school special education services is terminated following the granting of a diploma and that the parents may request a review of the recommendation for graduation.

**Section 226.125 Least Restrictive Environment**

Each local school district shall ensure that to the maximum extent appropriate handicapped children, including children in public or private institutions or other care facilities, are educated with children who are not handicapped, and that special classes, separate schooling or other removal of handicapped children from the regular educational environment occurs only when the nature or severity of the handicap is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

**Section 226.130 Facilities for Classes for Handicapped**

Facilities used for special education programs and services shall be appropriate to, and adequate for, the specific program or service. Such facilities shall be at least equal to those provided to the students in the standard program.

**Section 226.135 Written Policies for Handicapped Students' Records**

- a) Written policies shall be developed by the local school district

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concerning the method by which information concerning a student will be collected, the confidential nature of that information, the use to which it will be put, recorded and maintained, the period for which it will be maintained, the persons to whom it will be available and under what circumstances. All such policies shall be consistent with:

- 1) The Illinois School Student Records Act (Ill.Rev. Stat. 1981, ch. 122, pars. 50-1 et seq.)
- 2) 23 Ill. Adm. Code 375, Student Records
- 3) 23 Ill. Adm. Code 1, Public Schools Evaluation, Recognition and Supervision
- b) Such policies shall provide that all information maintained concerning a student receiving special education services be directly related to the provision of services to that child.
- c) These policies shall be made known to the parents or guardians of all students receiving special education services, and shall be available to the public.

**Section 226.140 Director of Special Education**

The establishment and operation of all special education programs and services shall be under the coordination and educational direction of a state-approved director of special education. Such director refers to an individual functioning in that capacity whose credentials have been approved by the State Board of Education.

**Section 226.145 Supervision**

All special education programs and services shall be provided with state-approved supervisory services, specific to the nature of the program or service. Supervisory personnel shall provide consultation to and coordination of special education programs and services.

**Section 226.150 Role of Local District Administrator**

Within each local school or district, the building principal or other designated local district administrator shall, in cooperation with special education administrative and supervisory personnel, facilitate the functioning of special education instructional and resource programs and related services as an integral part of the school program.

**Section 226.155 Responsibilities to Be In Writing**

The specific responsibilities of special education administrative and supervisory personnel and local district administrative personnel in relation to special education instructional and resource programs and related services shall be delineated in writing and made known to all persons involved.

**Section 226.160 Approval of Programs and Services Not in Compliance With this**

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Special education programs and services which would not comply with this Part shall require written approval from the State Board of Education prior to the implementation of the program or service. Factors to be taken into consideration shall include but are not limited to: student exceptional characteristics, class size, staff qualifications, physical plant and evaluation plan.

**SUBPART D: SPECIAL EDUCATION INSTRUCTIONAL PROGRAMS  
AND RESOURCE PROGRAMS**

**Section 226.210 Design of Special Education Instructional Programs**

Special education instructional programs shall be designed in direct response to the educational needs of exceptional children.

- a) Specific types of instructional programs may be formulated according to common exceptional characteristics of the students, or, for students with differing exceptional characteristics:
  - 1) Instructional programs formulated according to common exceptional characteristics of the students shall be in accord with those characteristics described in Section 226.552.
  - 2) Instructional programs which group students with differing exceptional characteristics shall be formulated only under the following circumstances:
    - A) The students are grouped in relation to a common educational need, or
    - B) The program can be completely individualized, and
    - C) The teacher is qualified to plan and provide an appropriate educational program for each student in the group.
- b) Student-based objectives shall be developed for each type of special education instructional program.
- c) The objectives of the program shall have direct and observable relationship to the objectives which have been established for each child who is placed in that program.

**Section 226.215 Curriculum for Instructional Programs**

- a) A curriculum of educational experiences adaptable to individual needs, interests, or abilities of each child shall be developed for each type of instructional program.
- b) This curriculum shall be:
  - 1) Sequential
  - 2) Developmental
  - 3) Goal-directed
  - 4) Clearly stated and available to the public
  - 5) Subject to continuing evaluation and revision.

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**Section 226.220 Factors to Consider in Developing Instructional Programs**

In the formation of special education instructional programs, consideration shall be given to the chronological age, mental age, physical size, motor ability, level of achievement, and social and emotional adjustment of the students.

- a) Special education age groupings shall be early childhood (generally ages 3-5), primary (generally ages 6-8), intermediate (generally ages 9-11), junior high (generally ages 12-14), and secondary (generally ages 15-21).
- b) The age range of students within a special program or in any individual instructional grouping shall not exceed four (4) years.

**Section 226.225 Instructional Class Size**

The principal determinants of the number of students served in each special education instructional program shall be the age of the students, the nature and severity of their exceptional characteristics, and the degree of intervention necessary. All exceptions to the following program size limitations shall require the written approval of the State Board of Education prior to the implementation of the program.

- a) Early childhood instructional programs shall have a maximum ratio of one (1) qualified teacher to five (5) students in attendance at any one given time; total enrollment shall be limited according to the needs of the students for individualized programming.
- b) Instructional programs which primarily serve children whose exceptional characteristics are either profound in degree or multiple in nature shall have a maximum enrollment of five (5) students.
- c) Instructional programs which primarily serve children whose principal exceptional characteristics are severe visual, auditory, physical, speech or language impairments, or behavioral disorders shall have a maximum enrollment of eight (8) students.
- d) Instructional programs which primarily serve children whose principal exceptional characteristics are learning disabilities or severe mental impairment; programs which are primarily diagnostic or developmental or programs which serve children with differing exceptional characteristics shall have a maximum enrollment of ten (10) students.
- e) Instructional programs which primarily serve children whose principal exceptional characteristics are moderate visual or auditory impairment shall have a maximum enrollment of twelve (12) students.
- f) Instructional programs which primarily serve children whose principal exceptional characteristics are educational handicaps or mild/moderate mental impairment shall have a maximum enrollment of twelve (12) students at the primary level and fifteen (15) students at the intermediate, junior high, and secondary levels.
- g) The local school district may increase the enrollment in a special education instructional program by a maximum of two (2) additional students to meet unique circumstances which occur during the school



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year. Such additions may be made only when the educational needs of all students who would be enrolled in the expanded program can be adequately and appropriately met, OR, the school district may increase the enrollment in a special education instructional program by a maximum of five (5) additional students when the program is provided with a full-time, noncertified assistant.

h) When the district wishes to exceed the maximum enrollments indicated above, approval shall be requested by writing to the State Board of Education, Department of Specialized Educational Services. The request shall include a rationale for the proposed enrollment variation and a plan for its evaluation. If the request for an enrollment deviation is denied, the district may appeal the decision to the State Superintendent of Education.

**Section 226-230 Integration of Student Into Standard Program**

Integration into a standard program of a student enrolled in a special education instructional program shall be determined in relation to the individual objectives established for the student. When a student is integrated into a standard educational program from a special program, the special teacher of that student shall be responsible for intensive coordination with the standard program teacher.

**Section 226-240 Special Education Resource Programs**

a) Special education resource programs shall be designed in direct response to the educational needs of exceptional children.

b) Resource programs shall be provided to exceptional children whose educational needs can be adequately met through part-time instruction by a special education teacher. Part-time instruction shall be considered as less than 50% of the school day. Such instruction may be delivered in resource room classes or on an itinerant basis.

1) Such programs shall include consultation with the standard program teacher and provision of special materials and equipment.

2) Enrollment in such a program shall be limited to the number of students who can effectively and appropriately receive assistance, ordinarily not to exceed a total of twenty (20). The teacher of each resource program shall actively participate in determining the appropriate enrollment.

3) Resource programs which group children with differing exceptional characteristics shall be formulated under the following circumstances:

- A) The students are grouped in relation to a common educational need, or
- B) The program can be completely individualized, and
- C) The teacher is qualified to plan and provide an appropriate educational program for each student in the group.

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## SUBPART E: SPECIAL EDUCATION RELATED SERVICES

**Section 226-250 Related Services to be Provided by School District**

a) Related services which shall be provided by the school district are: those activities supplemental to the standard educational program, special education instructional programs, or resource programs which serve to facilitate the child's development. The activities include evaluation, therapeutic or consultation services.

b) The related services to be provided are:

- 1) Speech and language services for all students with speech and/or language impairments which interfere with their educational or social development.

A) Speech and language services may be made available as:

- i) A special education related service
- ii) A special education resource program
- iii) A special education instructional program

B) Speech and language services shall include, but not be limited to:

- i) Screening and diagnosis of children with suspected language impairment
- ii) Planning and developing the clinical program
- iii) Therapy for children with impairments of oral language comprehension, production, or usage, including disorders of fluency, phonation, resonance, articulation, and oral language formation
- iv) Parent counseling
- v) Referrals and follow-up
- vi) Consultative and resource services to other professional personnel.

C) The number of children seen by a speech and language clinician shall be based on the nature of the speech and language needs of the individual children. At no time shall the case load exceed eighty (80) students.

2) School psychological services to and on behalf of students who require psychological evaluation and assistance in their educational or behavioral adjustment.

A) School psychological services shall include, but not be limited to:

- i) Screening of school enrollments to identify children who should be referred for individual study
- ii) Individual psychological examination and interpretation of those findings and recommendations which will lead to meaningful educational experiences for the child
- iii) Counseling and performing psychological remedial measures as appropriate to the needs of students, individually or in groups

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- iv) Participating in parent education and the development of parent understanding
- v) Consulting with teachers and other school personnel in relation to behavior management and learning problems
- vi) Consulting in program development.
- B) School psychological services shall be available, in an appropriate quantity, to all children for whom the district is responsible.
- C) School psychological services shall be utilized to assist in the process of developing an educational climate conducive to the optimum development of all children. Emphasis shall be placed on prevention as well as rehabilitation, or indirect as well as direct services.
- 3) School social work services shall be utilized to assist in educational or behavioral development is restricted due to social or emotional considerations, family circumstances, or problems of the environment.
  - A) School social work services shall include, but not be limited to:
    - i) Services to school personnel on behalf of children. The school social worker shall provide consultation and inservice training experiences to school personnel.
    - ii) Identification of children in need of services. The school social worker shall be responsible for providing the social developmental study in a case study evaluation and for participating in the identification of those children who require social work intervention.
    - iii) Direct services to children.
    - iv) Service to parents on behalf of children. The school social worker shall be responsible for serving as a liaison between the home and the school and for providing parental education and counseling as appropriate in relation to the child's problem.
    - v) Utilization of community resources. The school social worker shall facilitate the effective utilization of existing community resources to meet the needs of school children and shall assist in developing services which are needed but unavailable.
  - B) School social work services shall be available, in an appropriate quantity, to all children for whom the district is responsible.
  - C) School social work services shall be utilized to assist in the process of developing an educational climate conducive to the optimum development of all children. Emphasis shall be placed on prevention as well as rehabilitation, on indirect as well as direct services.

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- 4) Special reader services, braillets, typists, and interpreters shall be provided as required by the child's IEP.
- 5) Therapy services shall be provided for exceptional children whose educationally related, therapeutic needs have been determined in a multidisciplinary conference.
  - A) Physical and/or occupational therapy shall be provided for exceptional students whose physical impairments require appropriate therapeutic attention if the students are to receive full benefit from the instructional program provided them. Such therapy shall be provided to individual children in accord with the recommendation and prescription of a licensed medical examiner.
  - B) Other therapeutic services shall be provided as required to facilitate the education of exceptional children.
  - C) Therapeutic services do not include: services provided by licensed physicians, except for diagnostic or evaluation services and consultation to education staff; licensed dentists except for diagnosis or evaluation and consultation to education staff; physician extenders; registered or licensed practical nurses, except as they are performing the function of a school nurse; and other medical personnel involved in the provision of on going medical care.
  - 6) Consultant services shall be provided as required by the IEP, developed in accordance with Section 226.560.
    - A) Psychiatric consultation or other professional consultation which provides a therapeutic component shall be provided to those special education instructional programs or resource programs which serve children who exhibit affective or behavior disorders.
    - B) Other consultant services shall be provided as required to facilitate the education of exceptional children and as approved by the State Board of Education.

## Section 226.260 Other Related Services

Other related services including school health services, counseling services and parent counseling or training shall be provided by the local district when the multidisciplinary conference determines that such services would facilitate the educational development of exceptional children.

## Section 226.270 Student Based Objectives

Student-based objectives shall be determined for each special education related service.

## Section 226.280 Specific Objectives

Specific objectives shall be established for each child who receives special

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education related services.

**Section 226.290 Time Spent on Behalf of Students**

Related services time spent with or on behalf of the student shall be sufficient to be educationally or therapeutically adequate, as determined by the evaluation of the child's needs.

SUBPART F: PREVOCATIONAL PROGRAM

**Section 226.310 Provision of Prevocational Programs**

Prevocational programs consisting of organized instructional experiences, training experiences, and resource programs shall be provided to exceptional children in accordance with their needs and as determined by the IEP.

**Section 226.315 Determination of Need for Prevocational Program**

Provision of a prevocational program to individual students shall be determined at a multidisciplinary conference.

**Section 226.320 Vocational Plan**

A vocational plan indicating specific vocational objectives, the training required, service personnel required, and the length of the proposed program shall be developed for each child determined to require a prevocational program. This plan shall be developed in cooperation with the student and his or her parents, shall be adapted to the student's interests and aptitudes, and shall be incorporated into the IEP.

**Section 226.325 Community Work Experiences**

Community work experiences which are part of the student's vocational plan shall occur during the school day, unless this is precluded by the nature of the experiences.

**Section 226.330 Time Spent in Community Work Experiences**

No student shall spend more than one-half of the established school day participating in community work experiences or in local rehabilitation facilities.

**Section 226.335 Supervision of Community Work Experiences**

All community work experiences which are provided by the school as part of the vocational plan and for which the student receives educational credit shall be supervised by appropriate school personnel.

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**Section 226.340 Coordination With Other Vocational Programs**

Prevocational programs serving exceptional students shall be coordinated with other vocational programs of the local school district, and other public, private, and state agencies or organizations.

SUBPART G: HOME OR HOSPITAL PROGRAM

**Section 226.350 Content of Home and Hospital Program**

The home or hospital program shall consist of appropriate special education and related services which are provided by the school to a child in his or her home or in a hospital.

**Section 226.355 To Whom Provided**

The home and hospital program shall be provided to any child with a health or physical impairment which, in the opinion of a licensed medical examiner, will cause an absence from school for more than two consecutive weeks, and for whom school personnel determine that such a program can be of educational benefit.

**Section 226.360 Commencement**

Home and/or hospital services may begin as soon as eligibility has been established and the child's physical and mental health permit.

**Section 226.365 Amount of Instruction and Related Service**

The amount of instructional or related service time provided through the home or hospital program shall be determined in relation to each child's educational needs, as well as physical and mental health.

- a) 1) A child who requires a home or hospital program on a temporary basis shall be provided with instructional services sufficient to enable him or her to return to school with a minimum of difficulty. Instructional time shall not be less than five (5) hours per week in order to qualify for full reimbursement.
- 2) If the attending physician for the child has certified the child should not receive as many as five (5) hours of instruction in a school week, reimbursement on account of that child shall be computed proportionate to the actual hours of instruction per week for that child divided by five (5).
- b) A child who requires the home or hospital program for an extended time shall be provided with instructional services sufficient to appropriately advance his or her basic educational development.
- c) A child whose home or hospital instruction is being provided through a home-school telephone, or other similar device, shall be provided with not less than two (2) hours per week of direct instructional services.



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**Section 226.370 Scheduling**

Instructional time shall be scheduled only on days when school is regularly in session.

**Section 226.375 Summer Instructional Service**

When a student, for health related reasons, requires additional work to complete the preceding year's educational program, he or she may be provided with home and hospital instructional services during the summer.

**Section 226.380 Conferences to Facilitate Student's Return**

Periodic conferences shall be established between appropriate school personnel and home and hospital personnel and parents to coordinate the courses of study and to facilitate the student's return to school.

**Section 226.385 Improper Use of Home and Hospital Program**

The school district shall not utilize the home and hospital program to avoid its responsibilities to establish in-school programs or to eliminate children from the school program.

## SUBPART H: STATE OPERATED OR PRIVATE PROGRAMS

**Section 226.410 Referral to State or Private Facilities**

If a child exhibits exceptional characteristics which are determined in a multidisciplinary conference to be so profound, complex, or otherwise unique that no special education program offered by the public schools can adequately or appropriately meet his or her needs, the student shall be referred for placement in either a state-operated or a private facility.

**Section 226.415 Availability of Community Resources**

The availability of community resources as an extension of the public school education program in no way relieves the local district of its responsibility to provide a comprehensive program of special education nor of its responsibility to the individual student.

**Section 226.420 Residential Placement**

- a) When a residential placement for educational purposes is considered, the determination of the necessity of such a placement shall be individually made, based upon evidence that the student's needs are so profound or unique that his/her educational needs cannot be met in a less restrictive placement. Such placement shall be made when recent diagnostic assessments and other pertinent information indicate that,

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while the student can benefit from instructional services, he/she is so severely handicapped that his/her educational needs cannot be met in a less restrictive environment. If there is evidence of a condition which presents a danger to the physical well-being of the student or to other students, such evidence shall be a factor considered in making residential placement.

- b) When a multi-disciplinary conference determines that a child cannot be provided with an education in the public schools, appropriate school personnel shall meet with the parents of the child, and representatives of the nonpublic school to develop an IEP in accordance with these rules prior to placement. If the representative cannot attend, the local school district shall use other methods to insure participation by the private school.
- c) When residential placement is contemplated for children for reasons primarily other than education, one or more representatives of the appropriate state agencies as determined by appropriate school personnel, shall be invited to attend the multi-disciplinary conference. The timelines of this Part shall be observed whether or not appropriate representatives of other agencies attend:
  - 1) for children being placed for mental health or developmental disabilities purposes;
  - 2) for children involved in juvenile court proceedings, or in family situations likely to lead to such proceedings;
  - 3) for children who have actions pending in juvenile court seeking adjudication as minors in need of supervision or delinquents who are already adjudicated.

**Section 226.425 District's Responsibility to Locate Alternate Programs**

The district shall be responsible for locating an appropriate state-operated or private program and for facilitating the referral to that program. An appropriate program is one which will provide the child with special education experiences which are both adequate and appropriate to the student's needs.

- a) With the exception of emergency psychiatric placements which include an educational component, the decision to place the child in a private facility shall precede such placement and shall be made by the local school district and the state-approved director of special education. Placements made by parents in violation of this regulation shall not be approved for reimbursement unless the multidisciplinary conference recommends and the board or state-approved director of special education, if designated, decides that an appropriate program cannot be provided within the public schools, and is sufficiently knowledgeable of the proposed private facility to be assured that the program to be provided will be appropriate to the student's needs.
- b) When the multidisciplinary conference, the parents of the child, and the state-approved director of special education determines that a non-district residential or day educational program is indicated, the district shall consult the representatives of the appropriate state

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- agency to determine whether a state-operated program is available and/or is appropriate to the child's needs. State-operated programs, when available, should be given first consideration; however, the district shall recommend referral of the child to the agency or facility which is most appropriate to the individual situation. Consideration shall be given to the proximity of the child's home.
- c) Dual placement in a private school and a public school utilizing the provisions of Section 14-7.02 of The School Code shall be approved only when the child is being reintegrated into the public school program or when the student over the age of 16 receives part-time prevocational training in an appropriate private program.
  - d) If for any reason the recommended placement cannot be achieved, the district shall provide an alternate educational plan.

#### Section 226.430 Local District Responsible for Payment When Private Facility is Utilized

- a) When a private facility is utilized, the local district shall be responsible for payment of tuition and provision of transportation as provided by Section 14-7.02 of the School Code [105 ILCS 5/14-7.02]: If a child has been placed in an approved individual program and the tuition costs including room and board costs have been approved by the Review Board, then such room and board costs shall be paid by the appropriate State agency subject to the provisions of Section 14-8.01 of this Act. Room and board costs not provided by a State agency other than the State Board of Education shall be provided by the State Board of Education on a current basis. In no event, however, shall the State's liability for funding of these tuition costs begin until after the legal obligations of third party payors have been subtracted from such costs. If the money appropriated by the General Assembly for such purpose for any year is insufficient, it shall be apportioned on the basis of the claims approved. Each district shall submit estimated claims to the regional superintendent of schools for transmittal to the State Superintendent of Education. Upon approval of such claims, the State Superintendent of Education shall direct the State Comptroller to draw his warrants for payment on a monthly basis. Such payments shall be transmitted to the regional superintendent for the region in which each such district is located and the appropriate school treasurer. The frequency for submitting estimated claims and the method of determining payment shall be prescribed in the rules and regulations adopted by the State Board of Education.

- b) Each school district shall be responsible for monitoring the performance of each nonpublic facility where its students are placed, to ensure that the implementation of each student's Individualized Educational Program (IEP) conforms to the applicable requirements of this Part. In addition, no school district shall place any student in a nonpublic special education program, nor shall any such program accept placement of any student under Section 14-7.02 of the School

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Code, unless all the following conditions have been met.

- 1) The program has been approved by the State Board of Education for the school year for which placement is sought.
- 2) The allowable costs for the program have been established pursuant to Section 14-7.02 of the School Code.
- 3) The district has made the certification of inability to meet the student's needs to the State Superintendent of Education required pursuant to Section 14-7.02 of the School Code and the State Superintendent has found the district in substantial compliance with Section 14-4.01 of the School Code [105 ILCS 5/14-4.01].
- 4) The program has been approved by the State Board of Education for the student's primary and secondary disabilities.
- 5) The program has been approved by the State Board of Education for the age range that includes the age of the student.
- 6) The district has determined that all educational programming and related services specified on the student's IEP will be provided to the student by the facility. The use of a nonpublic facility does not relieve the district of the responsibility for providing all programming and related services required by the IEP.
- 7) All programming and the facility have entered into the contractual agreement called for in Section 226.440 of this Part.

#### Section 226.435 Annual Approval of Private Placements

All private facility placements shall be reapproved by the State Board of Education on an annual basis.

#### Section 226.440 Agreement Between Local School District and Private Facility

If the recommended private school placement is approved, the local district and the private facility shall enter into an agreement utilizing a format provided by the State Board of Education. The agreement shall provide for, but not be limited to:

- a) The child's IEP;
- b) The tuition costs; "If a child has been placed in an approved individual program and the tuition costs including room and board costs have been approved by the Review Board, then such room and board costs shall be paid by the appropriate State agency subject to the provisions of Section 14-8.01 of this Act. Room and board costs not provided by a State agency other than the State Board of Education shall be provided by the State Board of Education on a current basis. In no event, however, shall the State's liability for funding of these tuition costs begin until after the legal obligations of third party payors have been subtracted from such costs. If the money appropriated by the General Assembly for such purpose for any year is insufficient, it shall be apportioned on the basis of the claims approved. Each district shall submit estimated claims to the regional superintendent for schools for transmittal to the State Superintendent

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- of Education. Upon approval of such claims, the State Superintendent shall direct the State Comptroller to draw his warrants for payment on a monthly basis. Such payments shall be transmitted to the regional superintendent for the region in which each such district is located and the appropriate school treasurer. The frequency for submitting estimated claims and the method of determining payment shall be prescribed in rules and regulations adopted by the State Board of Education... (Ill. Rev. Stat. 1981, Ch. 122, par. 14-7.02)
- c) Periodic progress reports on the child from the private facility to be submitted at least annually.
  - d) Acceptance that the special education staff of the placing school district may inspect the private facility and confer with the staff at reasonable times.
  - e) Assurances that this placement is at no cost to parents in accordance with Section 14-7.02 of The School Code.

**Section 226.442 Supportive Data to be Maintained**

The local school district shall maintain a record of supportive data on each child placed in a private facility. These data will include:

- a) A summary of the child's individual problems.
- b) A description of the program required by the child.
- c) An explanation of why the child's needs cannot be met by the public school.
- d) The description of the special education program offered by the private facility.
- e) The request for placement of the child in a private facility as approved by the State Board of Education.
- f) Copy of the agreement with the facility.
- g) Conference reports and periodic progress reports submitted by the private facility.
- h) An annual reassessment of the need for continued private placement.

**Section 226.445 Transportation and Other Services**

When a state-operated or private day program is utilized, the local district shall provide transportation for the children in this program. Other services may be provided as mutually agreed between the district and the state-operated or private facility.

**Section 226.450 Monitoring of Student Progress by School District**

The local school district shall be expected to follow the progress of those children placed in a state-operated or private program. Public school personnel shall communicate at least annually with private or state facility personnel to evaluate the child's progress and, as appropriate, facilitate the child's return to the public school program.

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## SUBPART 1: IDENTIFICATION, EVALUATION, AND PLACEMENT OF EXCEPTIONAL CHILDREN

**Section 226.505 Communication of Special Education Programs to Public**

Each local district shall develop and implement procedures for creating public awareness of special education programs and for advising the public of the rights of exceptional children.

- a) All such procedures shall assure that information regarding special education programs and the rights of exceptional children is made available in each of the major languages represented in the district and in phrases which will be understandable to parents, regardless of ethnic or cultural background, or hearing or visual abilities.
- b) Procedures developed by the district to create public awareness of special education programs and for advising the public of the rights of exceptional children shall include, but need not be limited to:
  - 1) Annual notification to all parents in the district regarding the special education programs and services available in or through that district and of their right to receive, upon request, a copy of these rules.
  - 2) An annual dissemination of information to the community served by the school district regarding the special education program and services available in or through the district and the rights of exceptional children.
  - c) Documentation, including examples as appropriate, of the district's efforts to create public awareness of special education programs and inform parents of the rights of exceptional children shall be maintained in the district files.

**Section 226.510 Child Find Activities**

- a) Each local school district shall be responsible for actively seeking out and identifying all exceptional children in the district who are between the ages of 3 and 21. Procedures developed to fulfill this responsibility shall include but not be limited to:
  - 1) An annual screening of children between the ages of 3 and 5, to identify those who may need special education.
  - 2) Hearing and vision screening at regular intervals during the child's school career (see the Child Vision and Hearing Test Act (Ill. Rev. Stat. 1981, ch. 23, pars. 2331 through 2337) and The School Code (Ill. Rev. Stat. 1981, ch. 122, par. 27-8))
  - 3) Speech and language screening of each child upon initial enrollment in a public school district in Illinois.
  - 4) Annual screening by teachers and other professional personnel, for referral of those children who exhibit problems which interfere with their educational progress and/or their adjustment to the educational setting.

- b) Procedures may include coordination with local and state service

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agencies and existing parent groups.

### Section 226.515 Case Study Evaluation Process

When a child is identified through the screening process, or exhibits problems which interfere with the child's educational progress and/or adjustment to the educational setting, or when there is reason to believe that a child may require special education services, the child shall be referred for a case study evaluation.

- a) Each local school district shall develop, and make known to all concerned persons, procedures by which a case study evaluation of a child may be requested. These procedures shall:
  - 1) Designate the steps to be taken in making a referral
  - 2) Designate the person to whom a referral shall be made
  - 3) Indicate the information which should be provided.
- b) Referrals may be made by school district personnel, the parents of the child, community service agencies, persons having primary care and custody of the child, other professional persons having knowledge of the child's problems, the child or the State Board of Education.
- c) The local school district shall be responsible for determining the appropriateness of the referral, deciding what further action should be taken, and initiating the necessary procedures.
  - 1) To determine whether the referred child requires a formal case study evaluation, the local school district may conduct preliminary evaluation procedures such as observation of the child, assessment for instructional purposes, consultation with the teacher or the referring agent if it is someone other than a teacher, or a conference with the child.
  - 2) When the referral has been made by a professional staff member of the local school district, by the child's parents or by the child, the district shall be responsible for informing the person making the referral regarding its decision to conduct or not to conduct a case study evaluation. If the district decides not to conduct a case study evaluation of a child for whom such an evaluation has been requested, the information provided to the referring party shall contain, subject to the Illinois School Student Records Act and 23 Ill. Adm. Code 375, Student Records, the reasons for that decision.
  - 3) If the parents of the child, other persons having primary care and custody of the child or the child initiated a referral for a case study evaluation which the district refuses or fails to conduct, the parents, other persons having primary care and custody of the child, or the child may appeal this decision in an impartial due process hearing.
  - 4) When the district decides not to conduct a case study evaluation, the parents shall be notified, in writing, of the following:
    - A) The date of the referral and the reasons the case study evaluation was requested

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- B) The reasons the district has decided not to conduct a case study evaluation.

### Section 226.520 Notification to Parents of Exceptional Children

Parents or guardians of an exceptional child must be provided notice in writing by the local district, said notice to be sent at least ten (10) calendar days prior to the event, when the local school district proposes to initiate or change the identification, case study evaluation, reevaluation, or educational placement of the child or refuses to initiate or change the identification, case study evaluation, reevaluation, or educational placement of the child.

- a) The notice shall be:
  - 1) Written in language understandable to the general public, and
  - 2) Provided in the native language of the parent or other mode of communication used by the parents, unless it is clearly not feasible to do so.
  - 3) If the native language or other mode of communication of the parent is not a written language, the local school district shall insure:
    - A) That the notice is translated orally or by other means to the parent in his or her native language or other mode of communication,
    - B) That the parent understands the content of the notice, and
    - C) That there is written evidence on file that the requirements of these regulations have been met.
- b) The notice shall contain:
  - 1) A full explanation of all of the procedural safeguards available to the parents, including the availability upon request of a list of free or low cost legal and other relevant services available locally to assist parents in initiating an impartial due process hearing;
  - 2) A description of the action proposed or refused by the local school district, an explanation of why that district proposes or refuses to take the action, and a description of any options that district considered and the reasons why those options were rejected;
  - 3) A description of each evaluation procedure, test, record, or report that district used as a basis for the proposal or refusal; and
  - 4) A description of any other factors which are relevant to that district's proposal or refusal.
- c) Record of such notice shall be entered in the child's temporary school student record.

### Section 226.525 Parental Consent

- a) Written parental consent shall be obtained before conducting an initial case study evaluation of a child.



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- b) Written parental consent shall be obtained before conducting any reevaluation. The district must request a due process hearing when ten calendar days have elapsed since a request for consent to reevaluate was sent and the parent has either failed or refused to provide written consent.
- c) Written parental consent shall be obtained before implementing the initial placement of an exceptional child in a program providing special education and related services.

## Section 226-530 Parental Objection

If the parents object to a proposed case study evaluation by refusing to sign consent, and such objection is not resolved by a conference with the parents, the district may request an impartial due process hearing.

## Section 226-532 Determination of Communication Mode(s) and Cultural Background

Before a child is given a case study evaluation, the local school district shall be responsible for determining the child's language use pattern, mode of communication, and cultural background.

- a) Determination of the child's language use pattern and cultural background shall be made by determining the language(s) spoken in the child's home and the language(s) used most comfortably and frequently by the child.
- b) If the child has a non-English background, a determination shall be made of his or her proficiency in English. Such a determination shall be conducted in accordance with the provisions of 23 Ill. Adm. Code 228 (Bilingual Education) which specify the assessment procedures and eligibility criteria for bilingual education programs (see 23 Ill. Adm. Code 228.15).
- c) Determination of the child's mode of communication shall be made by assessing the extent to which the child uses expressive language and the use he or she makes of other modes of communication (e.g., gestures, signing, unstructured sounds) as a substitute for expressive language.
- d) The child's language use pattern, proficiency in English, mode of communication and cultural background shall be noted in the child's temporary student records, and this information shall be used in the case study evaluation and in the development and implementation of the individualized education program.

## Section 226-535 Case Study Evaluation Components

The child shall be given a case study evaluation appropriate to the nature of the problems which caused the referral. The intensity of the evaluation procedures shall be determined by the complexity of the child's problems and the amount of information necessary to understand those problems and develop the IEP in accordance with Section 226-560, 226-555, and 226-5.

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- a) For the child who requires special education placement at home or in a hospital because of a temporary physical or health impairment, estimated to last six months or less, a homebound services case study evaluation shall be conducted, and an IEP developed. This evaluation shall include, but need not be limited to:
  - 1) Evaluation of the physical or health impairment by a licensed medical physician, for diagnostic and evaluative purposes.
  - 2) Estimation by the physician of the time the child will require homebound services.
  - 3) A review of the child's current educational status and academic needs.

- b) For the child whose problems seem to be limited to the area of speech or language, a speech and language case study evaluation shall be conducted, and an IEP developed. This evaluation shall include, but need not be limited to:
  - 1) A hearing screening completed at the time of the evaluation or within the previous six months
  - 2) A review of the child's medical history and current health status
  - 3) A review of the child's academic history and current educational functioning
  - 4) An assessment of the child's speech and language by a certified speech and language clinician
  - 5) An interview with the child.

The speech or language impaired child with additional handicapping conditions or educational deficits shall be referred for further evaluation.

- c) For all other children, a comprehensive case study evaluation shall be conducted. This evaluation shall include, but need not be limited to:
  - 1) An interview with the child
  - 2) Consultation with the child's parents
  - 3) A social developmental study, including an assessment of the child's adaptive behavior and cultural background
  - 4) A report regarding the child's medical history and current health status
  - 5) A vision and hearing screening, completed at the time of the evaluation or within the previous six months
  - 6) A review of the child's academic history and current educational functioning
  - 7) An educational evaluation of the child's learning processes and level of educational achievement
  - 8) An assessment of the child's learning environment
  - 9) Specialized evaluations specific to the nature of the child's problems.
    - A) A psychological evaluation by a certified school psychologist, with the extent to be determined by the individual situation, shall be required:
      - i) In order to place any child in a special education placement for children with mental impairment as

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authorized by Section 14-8.01 of the School Code [105 ICS 5/14-8.01].

- ii) In order to place any child in a special education instructional program.
- iii) In order to place any child in a special education placement for children with behavior disorders.
- iv) In order to place any child where there are questions about his or her intellectual functioning and/or learning capacity.
- v) In order to determine any child eligible for special education and related services due to the disability of autism or traumatic brain injury.
- vi) A psychological evaluation for all other children shall be considered optional.
- vii) As appropriate, the psychologist may limit this evaluation to a review of the results of tests administered by other school district personnel and/or the results of externally administered evaluations, an analysis of the learning environment and learning processes, participation in the multidisciplinary conference and such other procedures as deemed necessary.

- B) An appropriate medical examination by a physician licensed to practice medicine in all of its branches shall be obtained, for diagnostic and evaluative purposes, for any child with either a suspected physical, health, vision or hearing impairment. This examination shall be conducted at no cost to the parent. Nothing in these regulations shall be construed to require any child to undergo any physical examinations or medical treatment whose parents or guardian object thereto on the grounds that such examinations or treatment conflicts with his or her religious beliefs.

- C) A certified speech and language clinician shall administer a comprehensive evaluation for any child suspected of having a speech or language impairment.

- D) For all children other specialized evaluations appropriate to the nature of the child's problems shall be provided at no cost to the parents. When specialized evaluation procedures not usually provided by the local school district are required to provide a better understanding of the child's educational or educationally related problems, the local school district recommending such evaluation procedures shall be responsible for assisting the parents in locating and making use of appropriate local and/or state resources.

- i) Consideration shall be given to resources of state agencies or third party payors.
- ii) The child may not be prohibited from receiving a

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special education program or service because he or she is financially or otherwise unable to obtain specialized evaluation procedures.

- E) An audiological evaluation appropriate to the needs of the child shall be provided by an audiologist when necessary.
- F) If the parent disagrees with an evaluation obtained by the local school district, the district shall inform the parent of the opportunity to obtain an independent evaluation at public expense.

- i) In such cases, the local district may initiate an impartial due process hearing prior to such independent evaluation to demonstrate that the district's evaluation is appropriate.
- ii) If the final decision is that the local district's evaluation is appropriate, the parent shall have the right to an independent evaluation, but not at public expense.

**Section 226.538 Incomplete Case Study Evaluation**

If all requirements for the case study evaluation cannot be fulfilled, due to lack of parental involvement, religious convictions of the family, or inability of the child to participate in an evaluative procedure, the district shall note the missing component(s) in the child's temporary student records and give the reason(s) it could not be provided.

**Section 226.540 Case Study to be Nondiscriminatory**

Each case study evaluation shall be conducted so as to assure that it is linguistically, culturally, racially, and sexually nondiscriminatory.

- a) The language(s) used to evaluate a child shall be consistent with the child's language use pattern. (See Section 226.532 of this Part.) If the language use pattern involves two or more languages or modes of communication, the child shall be evaluated by qualified specialists or, when needed, qualified bilingual specialists using each of the languages or modes of communication used by the child. The provisions of subsections (b) and (c) of this Section shall apply when a qualified bilingual specialist is needed but unavailable.
- b) If documented efforts to locate and secure the services of a qualified bilingual specialist are unsuccessful, the district shall use an individual who possesses the professional credentials called for in Section 226.544 of this Part. This qualified specialist shall be assisted by a certificated school district employee or other individual who has demonstrated competencies in the language of the child.
- c) If documented efforts to locate and secure the services of a qualified bilingual specialist or a qualified specialist assisted by another individual as provided in subsection (b) of this Section are

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unsuccessful, the district shall conduct assessment procedures which do not depend upon language. Any special education resulting from such alternative procedures shall be reviewed at regular intervals until the child acquires a predominantly English language use pattern.

d) Tests given to a child whose primary language is other than English shall be relevant, to the maximum extent possible, to his or her culture.

e) If the child's receptive and/or expressive communication skills are impaired due to hearing and/or language deficits, the district shall utilize test instruments and procedures which do not stress spoken language and one of the following:

- 1) Visual communication techniques in addition to auditory techniques.
- 2) An interpreter to assist the evaluative personnel with language and testing.

f) Each local district shall insure that testing and evaluation materials and procedures used for evaluation and placement of exceptional children must be selected and administered so as not to be racially or culturally discriminatory.

g) Each local district shall insure that:

- 1) Tests and other evaluation materials:
  - A) Are provided and administered in the child's native language or other mode of communication, unless it is clearly not feasible to do so;
  - B) Have been validated for the specific purpose for which they are used; and
  - C) Are administered by trained personnel (e.g., certified school psychologists) in conformance with the instructions provided by their producer.
- 2) Tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those which are designed to provide a single general intelligence quotient.
- 3) When tests are administered to a child with impaired sensory, motor, or communication skills, tests shall be selected and administered to ensure that the results accurately reflect the child's aptitude or achievement level rather than reflecting the child's impaired sensory, motor or communication skills except where those skills are the factors which the test(s) purports to measure.
- 4) No single procedure is used as the sole criterion for determining an appropriate education program for a child.
- 5) The evaluation is conducted by a multidisciplinary team, including at least one teacher or other specialist with knowledge in the area of the suspected disability, who shall be a qualified bilingual specialist if one is needed and available. For the child suspected of having specific learning disabilities, the following additional team members must also be included: the

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child's regular teacher; or if the child does not have a regular teacher, a regular classroom teacher certified to teach a child of his or her age; or for a child of less than school age, an individual qualified to teach a child of his or her age.

- 6) The child is assessed in all areas related to the suspected disability, including, where appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities.

## Section 226.542 Use of Outside Study

In those instances in which a child has been evaluated by qualified professional personnel outside the school district, that evaluation shall be considered and may be utilized in determining eligibility and need for special education placement.

## Section 226.544 Independent Educational Evaluation

Parents have the right to obtain an independent educational evaluation of their child, subject to subsections (a) through (i) of this Section.

- a) Parents must be informed in writing of their right to obtain an independent educational evaluation if they disagree with the evaluation conducted or obtained by the school district. This must be done at the conclusion of the multidisciplinary conference at which the district's evaluation was considered. At the time the parents are informed of their right to obtain an independent educational evaluation, the school district shall provide to the parents:

- 1) the list of suggested independent educational evaluators developed by the State Board of Education in accordance with the provisions of subsections (e) and (f) of this Section; and
  - 2) the criteria set forth in subsection (f) of this Section.
- b) Parents have the right to obtain an independent educational evaluation at public expense if they disagree with an evaluation obtained by the school district. However, the school district may initiate a Level I hearing to demonstrate that its evaluation is appropriate, provided that such a hearing is initiated within five (5) school days following receipt of a written parental request for an independent educational evaluation.

- 1) An independent educational evaluation at public expense must be completed within 30 calendar days of a parent's written request, unless the school district initiates a Level I hearing or the parties agree that the 30-day period should be extended. If either party wishes such an extension and is unable to obtain the other party's agreement, the school district shall initiate a Level I hearing within ten (10) school days of the date the extension was proposed.
- 2) If the final decision of the hearing and review process is that the school district's evaluation is appropriate, the parents

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- shall have the right to an independent educational evaluation, but not at public expense.
- 3) If the school district's evaluation is shown to be inappropriate, the district shall pay for the independent educational evaluation, or reimburse the parents for the cost of said evaluation.
  - 4) If the Level I hearing decision indicates that the parent is entitled to an independent educational evaluation at public expense, it must be completed within 30 calendar days of the decision, unless the parties agree that the 30-day period should be extended. If either party wishes such an extension and is unable to obtain the other party's agreement, the school district shall initiate a Level I hearing within ten (10) school days of the date the extension was proposed.
  - c) If the parent obtains an independent educational evaluation at private expense, the result of the evaluation:
    - 1) must be considered by the school district in any decision made with respect to the provision of a free appropriate public education to the child; and
    - 2) may be presented as evidence at a hearing or review regarding the child pursuant to Subpart J of this Part.
  - d) When an independent evaluation is obtained at public expense, the party chosen to perform the evaluation shall be either:
    - 1) an individual who possesses the credentials required to perform the specific evaluation component(s) in question (see subsection (f) of this Section), as reflected by inclusion of that person's name on the list provided by the State Board of Education; or
    - 2) another individual possessing credentials specified in subsection (f) of this Section holding valid credentials specified in subsection (f) of this Section shall be included in the list of independent educational evaluators suggested by the State Board of Education as qualified to perform the respective evaluation component(s) at public expense.
  - f) Required Credentials by Evaluation Component

Component	Credentials
Social Developmental Study (Adaptive Behavior, Cultural Background)	School Service Personnel Certificate endorsed for social work, guidance, or school psychology (23 Ill. Adm. Code 25.210, 25.220, or 25.230).
Medical Review	School Service Personnel Certificate endorsed for school nursing (23 Ill. Adm. Code 25.240), or a license to practice medicine in all its branches.
Vision and Hearing	Certificate of training issued by

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Screening	the Department of Public Health (77 Ill. Adm. Code 675).
Academic Performance	Teaching certificate/approval appropriate for the age or handicap of the child, i.e., Elementary (K-9) (23 Ill. Adm. Code 1-710), High School (6-12) (23 Ill. Adm. Code 1-720 or 1-730), or Special (K-12), endorsed in the area of handicapping condition (23 Ill. Adm. Code 25.40 and 25.43); or
Psychological	School Service Personnel Certificate endorsed for school psychology or guidance. School Service Personnel Certificate endorsed for school psychology.
Speech and Language Assessment	Special Certificate endorsed for speech and language impairment (23 Ill. Adm. Code 25.45).
Evaluation of Learning Processes	School Service Personnel Certificate endorsed for school psychology or Special Certificate endorsed for learning disabilities.
Audiological	License to practice as an Audiologist issued by the Department of Professional Regulation pursuant to the Illinois Speech-Language Pathology and Audiology Practice Act (Ill. Rev. Stat. 1988 Supp., ch. 111, pars. 7901 et seq.)
Adapted Physical Education	Special Certificate endorsed for physical education with approval in adapted physical education (23 Ill. Adm. Code 25.40 and 25.43).
Occupation Therapy Evaluation	Certificate/Registration issued by the Department of Professional Regulation pursuant to the Occupation Therapy Practice Act (Ill. Rev. Stat. 1987, ch. 111, par. 3701 et seq.)
Physical Therapy Evaluation	Certificate/registration issued by the Department of Professional Regulation pursuant to the Physical Therapy Act



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(Ill. Rev. Stat. 1987, ch. 111, par. 4251 et seq.)  
 Licensure/registration issued by the Department of Professional Regulation pursuant to the Medical Practice Act of 1987 (Ill. Rev. Stat. 1987, ch. 111, par. 4400-1 et seq.)  
 Licensure/registration issued by the Department of Professional Regulation pursuant to the Medical Practice Act of 1987 (Ill. Rev. Stat. 1987, ch. 111, par. 4400-1 et seq.)

## Psychiatric Evaluation

## Neurological Evaluation

## Orientation/Mobility

Certification for orientation/mobility instruction and evaluation (Certification for Orientation and Mobility, Division, Association for the Education and Rehabilitation of the Blind and Visually Impaired, 1984; no later amendments or editions are included).

g) No person shall be included in the list unless he or she has provided in writing to the State Board of Education the following specific information for each credential for which the Board's acknowledgement is sought:

- 1) name of licensee, certificate, or other credential;
- 2) name of credentialing agency or body;
- 3) number of certificate, license, registration, or other credential;
- 4) date of issue; and
- 5) period of validity.

b) Persons wishing to be included in the list referred to in subsection (g) may submit information about their credentials in writing to the State Board of Education at any time. The State Board of Education shall annually update and provide the list to school districts.

i) Parent(s) and school district shall agree on the qualifications of the examiner and the specific evaluation(s) to be completed prior to the initiation of an independent educational evaluation at public expense. If agreement cannot be reached, it shall be the school district's obligation to initiate a level I hearing subject to the time constraints set forth in subsection (b)(1) or subsection (b)(4) of this Section, as applicable.

## Section 226.545 Home/Hospital Services Eligibility

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Upon completion of a homebound services case study evaluation (See Section 226.540(a)) the local district superintendent or designee shall determine the child's eligibility for homebound special placement and recommend an appropriate placement. (See Subpart G) A report regarding these recommendations and all documentation upon which they were based shall be placed in the child's temporary student records.

## Section 226.548 Speech and Language Case Study Conclusions

Upon completion of a speech and language case study evaluation (See Section 226.540(b)) the speech and language clinician shall review the findings, determine the child's eligibility and need for speech and language services, and convene a conference for the purpose of developing the child's IEP as described in Section 226.558 of this Part. Following the IEP meeting, the speech and language clinician shall make recommendations to the local district superintendent or designee for appropriate placement.

- a) A speech and language impaired child exhibiting additional problems shall be referred for further evaluation.
- b) A report of these findings and recommendations shall be placed in the child's temporary student records.

## Section 226.550 Formulation of Program and Service Options

Upon completion of a comprehensive case study evaluation (See Section 226.540(c)) one or more conferences shall be convened for the purpose of formulating program and service options. This may or may not be the conference at which the IEP is developed. If not, an additional meeting is to be held, in accordance with Section 226.560.

- a) 1) Participants in the conferences shall include appropriate representatives of the child's local district of residence; the special education director or designee who is qualified to provide or supervise the provision of special education; all those school personnel involved in the evaluation of the child; the parent(s); other persons having significant information regarding the child; and those persons who may become responsible for providing the special education program or service to the child; the child, where appropriate, and other individuals at the discretion of the parent or local district.
- 2) When a student is being considered for residential placement, the multidisciplinary conference shall include representatives of other state agencies as set forth in Section 226.420.
- b) The purpose of the above conference(s) shall be to:
  - 1) Establish a composite understanding of the child's learning characteristics, sensory and motor skills, and behaviors.
  - 2) Determine eligibility for special education programs and/or services.
  - 3) Determine the child's unique educational needs and the extent to

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- which these needs can be met by the standard program.
- 4) Determine the nature and degree of special education intervention which is needed, and recommend corresponding placement which is least restrictive of interaction with nonhandicapped children.
  - c) If the above conference is also used for the development of the IEP, then the components of Section 226.560 of these rules shall be followed.

**Section 226.552 Characteristics Determining Eligibility for Special Education**

Eligibility for special education programs and services shall be determined by the presence of one or more of the following exceptional characteristics:

- a) Visual impairment - The child's visual impairment is such that the child cannot develop his or her educational potential without special services and materials.
- b) Hearing impairment - The child's residual hearing is not sufficient to enable him or her to understand the spoken word and to develop language, thus causing extreme deprivation in learning and communication. Or the child exhibits a hearing loss which prevents full awareness of environmental sounds and spoken language, limiting normal language acquisition and learning achievement.
- c) Physical and health impairment - The child exhibits a physical or health impairment, either temporary or permanent, which interferes with his or her learning and/or which requires adaptation of the physical plant.
- d) Speech and/or language impairment - The child exhibits deviations of speech and/or language processes which are outside the range of acceptable deviation within a given environment and which prevent full social or educational development.
- e) Specific learning disability - The child exhibits a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations. The term includes such conditions as perceptual handicaps, brain injury, minimal brain dysfunction, dyslexia and developmental aphasia. The term does not include children who have learning problems which are primarily the result of visual, hearing, or motor handicaps, of mental retardation, of emotional disturbance, or of environmental, cultural, or economic disadvantage.
- f) Behavior disorder/emotional disorder - The term means a condition exhibiting one or more of the following characteristics over an extended period of time and to a marked degree, which adversely affects educational performance, even after supportive assistance has been provided. The student must demonstrate an inability to learn which cannot be explained by intellectual, sensory, health, cultural, or linguistic factors; an inability to develop or maintain satisfactory interpersonal relationships with peers and adults; or

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- inappropriate types of behavior or feelings under normal circumstances; or a general pervasive mood of anxiety, unhappiness, depression; or a tendency to develop physical symptoms or fears associated with personal or school problems.
- g) Mental impairment - The child's intellectual development, mental capacity, adaptive behavior, and academic achievement are markedly delayed. Such mental impairment may be mild/moderate, severe, or profound.
- h) Multiple impairment - The child exhibits two or more impairments, severe in nature or total impact, which significantly affect his or her ability to benefit from the educational program.
- i) Autism - The term means a developmental disability significantly affecting verbal and nonverbal communication and social interactions, generally evident before age 3, that adversely affects a child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. The term does not apply if a child's educational performance is adversely affected primarily because the child has a behavior disorder/emotional disorder, as defined in subsection (f) of this Section.
- j) Traumatic brain injury - The term means an acquired injury to the brain that adversely affects a child's educational performance. A traumatic brain injury is one which is caused by an external physical force and occurs after the perinatal period; it is not medically degenerative or congenital. The student must demonstrate impairment in one or more of the following areas:
  - 1) cognitive functioning (attention, concentration, intelligence, memory, problem-solving, abstract reasoning, judgment, and information-processing);
  - 2) communication (receptive and expressive language and speech);
  - 3) social/emotional (relationships, self-esteem, self-control, age-appropriate behavior);
  - 4) sensory/perceptual (visual, auditory, kinesthetic, tactile, visual-motor integration);
  - 5) motor (balance, equilibrium, fine and gross motor, spatial orientation, speech, speed and coordination of movement, strength);
  - 6) adaptive behavior (daily living skills, socialization, coping skills).
- k) Developmental delay - The term means one or more disabilities as defined in this Section for children ages 3-5 experiencing delay in at least one of the following domains: physical development, cognitive development, communication development, social and emotional development, or adaptive development.

Section 226.555 Recommendations for Special Education and Related Services Eligibility

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Recommendations made at the multidisciplinary conference shall be determined by consensus of the participating public school personnel; if an agreement cannot be reached, additional information shall be obtained. In considering a child with mental impairment, a certified school psychologist must concur with the child's eligibility based on the results of a psychological evaluation. In order for an eligibility decision to occur, the child must be evaluated in accordance with these regulations, found to exhibit one or more of the exceptional characteristics listed in Section 226.552 which adversely affect the child's educational performance, and require special education and related services. Without an adverse effect on educational performance caused by the exceptional characteristic, the child cannot be eligible for special education and related services.

**Section 226-558 Results and Recommendations to be in Writing**

A written report of the results and recommendations of the multidisciplinary conference shall be prepared.

- a) The conference report shall be dated, and list the names of all those in attendance at the conference.
- b)
  - 1) A copy of the conference report, together with all documentation upon which it is based, shall be kept on file by the local school district. The parents shall be informed of their right of access to the report.
  - 2) When a student is being considered for residential placement, the multidisciplinary conference shall include representatives of other state agencies as set forth in Section 226.420.

**Section 226-560 Development of IEP and Placement Decision**

If a multidisciplinary conference was held for the purpose of determining eligibility, an additional meeting or meetings must be held for the purpose of developing, reviewing, and/or revising the child's IEP and determining placement based upon the IEP. For children ages 3 to 5, an Individualized Family Service Plan (IFSP) developed pursuant to 34 CFR 303.340 et seq. may be used at the discretion of the local school district and with concurrence of the parents in lieu of development of an IEP pursuant to this Section and Section 226-562 of this Part. The meeting at which a child's IEP is developed must be held within thirty (30) days of a determination that the child is eligible for special education and related services.

- a) Parents of a disabled child must be notified of the meeting to develop, review, and revise the child's IEP. The notice must indicate the purpose, time and location of the meeting, and who will be in attendance. The local school district must take steps to insure that the parents are present at each meeting or are afforded the opportunity to participate, including:
  - 1) Notifying parents of the meeting early enough to insure that they will have an opportunity to attend; and

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- 2) Scheduling the meeting at a mutually agreed on time and place.
  - b) The following participants must be included in the IEP meeting:
    - 1) A representative of the local district, other than the child's teacher, who is authorized to commit services and who is qualified to provide or supervise the provision of special education.
    - 2) The child's teacher. Teacher organization representatives may not attend without parental and district consent.
    - 3) One or both of the child's parents or guardians.
      - A) If neither parent can attend, the local district shall use other methods to insure parent participation, including individual or conference telephone calls.
      - B) A meeting may be conducted without a parent in attendance if the local district is unable to convince the parents that they should attend. In this case the local district must have a record of its attempts to arrange a mutually agreed on time and place such as:
        - i) Detailed records of telephone calls made or attempted and the results of those calls,
        - ii) Copies of correspondence sent to the parents and any responses received, and
        - iii) Detailed records of visits made at the parent's home or place of employment and the results of those visits.
      - C) The local district shall provide an interpreter for parents who are deaf or whose native language is other than English, if necessary to assist them in participating in the IEP meeting.
  - 4) The student, where appropriate, except that any student who will be 14 1/2 or older during the school year must be invited, since one purpose of the IEP meeting must be to consider transition services. When the student does not attend, the local district shall take other steps to ensure that the student's preferences and interests are considered. For students who will not reach age 14 1/2 during the school year, if transition services are discussed at an IEP meeting that does not include the student, the local district is responsible for insuring that an IEP meeting to which the student is invited is conducted before a decision is made regarding transition services for that student.
  - 5) A qualified bilingual specialist or bilingual teacher, if needed to assist the other participants in understanding the child's language, and/or such person(s) as may be needed to assist in understanding the child's culture.
  - 6) Other individuals at the discretion of the parent or local district.
  - 7) A representative of any other agency that is likely to be responsible for providing or paying for transition services, when a purpose of the meeting is to consider transition services. If

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- an agency invited to send a representative does not do so, the local district shall take other steps to obtain the participation of the agency in the planning of any transition services.
- c) For a child who has been evaluated for the first time, the local district shall insure that a member of the evaluation team participates in the meeting or that the representative of the local district, the child's teacher, or some other person who is knowledgeable about the evaluation procedures used with the child, and is familiar with the results of the evaluation, participates in the meeting, as well as an interpreter for the deaf if necessary.
- d) Each IEP shall be linguistically and culturally appropriate; that is, the child's cultural background and language proficiency shall be taken into consideration consistent with the applicable provisions of the State Board of Education's rules for bilingual education (see 23 Ill. Adm. Code 228-25(c) and (d)). Recommendations for special education placement shall be based on the following, consistent with Section 226.550(b)(4):
- 1) The child shall be placed in the educational program which is appropriate to the student's needs and least restrictive of the student's interaction with nondisabled children.
  - 2) The special education placement must be based on the child's IEP, and located as close as possible to the child's home.
  - 3) Unless a child's IEP requires some other arrangement, the child must be educated in the school which he or she would attend if not disabled.
  - 4) Consideration must be given to any potentially harmful effect on the child, or the quality of services which he or she needs.
  - e) The proposed placement shall be consistent with the findings of the case study evaluation.

**Section 226.562 IEP Content and Parental Access**

- a) The IEP shall include, but is not limited to, the following:
- 1) A statement of the child's present levels of educational performance.
  - 2) A statement of annual goals, including short-term instructional objectives.
  - 3) A statement of the specific special education and related services to be provided to the child, and the extent to which the child will be able to participate in regular educational programs. Related services shall not include those services provided by licensed physicians, except for their diagnostic or evaluation services and consultation to education staff; licensed dentists except for diagnosis or evaluation and consultation to education staff; physician extenders; registered or licensed practical nurses, except as they are performing the function of a school nurse; and other medical personnel involved in the provision of ongoing medical care.

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- 4) For students who will be 14 1/2 years of age or older during the school year, and for students under age 14 1/2 when determined appropriate, a statement of any transition services needed, including a statement of each participating school district's or agency's individual and cooperative responsibilities before the student leaves the school setting. If the IEP team determines that services are not needed, the IEP must include a statement to that effect and the basis upon which the determination was made.
- 5) For students who may, after reaching age 18, become eligible to participate in the home-based support services program for mentally disabled adults authorized by the Developmental Disability and Mental Disability Services Act [405 ILCS 80/2-1], specific plans related to that program that conform to the requirements of Section 14-8.02 of the School Code (see P.A. 89-425, effective June 1, 1996).
- 6) A statement of the child's ability to participate in assessments and what accommodations are necessary, if any. If the child is unable to participate even with accommodations, a description of the alternative assessment(s) to be used must also be included.
- 7) The language(s) or mode(s) of communication in which special education and related services will be provided, if other than or in addition to English.
- 8) The projected dates for initiation of services and the anticipated duration of the services.
- 9) Appropriate objective criteria and evaluation procedures and schedules for determining, on at least an annual basis, whether the short-term instructional objectives are being achieved.
- b) The local district shall give the parent, on request, a copy of the child's IEP.
- c) Following the determination of the child's IEP, parents shall be afforded, on an ongoing basis, reasonable opportunity for comment on and input into their child's educational program.

**Section 226.564 Authority of School Board to Place Students**

The local school board, or by school board action the director of special education, shall authorize a representative of the district to make commitments for the provision of services on behalf of the district as required by Section 226.560(b)(1) of this Part.

**Section 226.566 Completion to be in 60 School Days**

The case study evaluation and multidisciplinary conference shall be completed within sixty (60) school days of the date of referral or the date of application for admittance to the public school by the parents of the child. (See Ill. Rev. Stat. 1981, ch. 122, par. 14-8.02)

**Section 226.568 Notice to Parents Before Placement**



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- a) At least ten (10) calendar days prior to the actual placement of the child, the parents shall be notified, in writing, of the following:
  - 1) The result of the case study evaluation.
  - 2) The nature of the special education program or service needed by the child.
  - 3) The recommendations for placement and the plan for implementing those recommendations.
  - 4) Their right to object to the proposed placement and the specific procedures in making such objection, including the procedures for requesting an impartial due process hearing.
- b) Record of such notice shall be entered in the child's temporary student record.

**Section 226.570 Parents' Response to Notice of Proposed Placement**

- a) If the parents consent to the proposed placement, they may waive the ten (10) calendar day interval before placement, and the child shall be placed in the recommended program as soon as practicable.
- b) If the parents object to the proposed placement, they may appeal it by requesting a Level I hearing. Such a request shall be made in writing to the superintendent of the local school district. Rules for due process hearings are set forth in Subpart J of this Part.

**Section 226.575 Timeline for Placement**

Special education placement shall be made as soon as possible after the determination of eligibility and need for such placement but in no case shall placement occur later than the beginning of the next school semester [105 ILCS 5/14-8.02].

- a) Each child referred for a case study evaluation at least sixty (60) school days prior to his or her third birthday must have a determination as to eligibility and any resulting IFSP or IEP as set forth in Section 226.560 of this Part ready to implement by the third birthday.
- b) Each child determined pursuant to 34 CFR 301.300 to be eligible for services under Part H of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. 1401 et seq.) must be referred to his or her public school district for case study evaluation for services under Part B of IDEA at least 60 school days prior to his or her third birthday.
- c) When special education placement is not possible prior to the next school semester, the local school district shall be responsible for providing interim services between placement determination and actual placement which are as appropriate to the child's needs as possible.
- d) The local school district shall provide written notification to the parents of the child and the State Superintendent of Education regarding the nature of the services the child will receive in the interim. Written verification of the provision of these services

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shall be kept in the child's temporary student record.

**Section 226.578 Annual Review of Child Status**

In addition to initial placement conferences and/or IEP meetings, the educational status and continued special education placement of each child shall be reviewed at least annually in a conference attended by those professionals working with the student, the parents, the child where appropriate, the special education director or designee who is qualified to supervise the provision of special education, and other individuals at the discretion of the parent or local district.

- a) Utilizing appropriate evaluation information, including teacher and parent opinions, the annual review shall determine the extent to which the child has met the objectives and goals as specified in the child's IEP and recommend further evaluation or revise the child's IEP.
- b) When further evaluation is indicated, pursuant to the annual review, a review of the child's status as requested by the teachers, parents, other knowledgeable persons, or as a result of an impartial due process hearing, such an evaluation shall be completed within sixty (60) school days of the request.
- c) A reevaluation of the child shall be conducted every three years or more frequently if conditions warrant or if the child's parent or teacher requests an evaluation.

**Section 226.580 Notice to Parents Regarding Evaluation**

Notification to parents regarding continuation, change, reevaluation, or termination of placement shall inform the parents of their right to object and of the procedures to be followed to make such an objection.

**Section 226.585 Written Notice to Parents**

Written notification regarding the continuation of the child's special education placement shall be provided to the parents of the child as soon as possible but not later than ten (10) calendar days prior to the beginning of each school year.

**Section 226.590 Written Notice to Parents Prior to Change in Placement**

At least ten (10) calendar days prior to any major change in the educational placement of an exceptional child (excluding changes in levels, i.e., primary to intermediate), including those stated in Section 226.580, the parents shall be given written notification of the proposed change, including the reasons for the change and a description of the proposed program.

- a) If the parents request an impartial due process hearing regarding a proposed change in the educational placement of their child, the district shall not change the placement until the matter is resolved.
- b) If the parents agree to the proposed placement, then a meeting shall

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be held for the revision of the child's IEP.

**Section 226.595 Termination of Special Education Services**

Special education placement may be terminated only after a conference has been held, which the child's parents have been afforded a reasonable opportunity to attend and participate. A complete review of the child's educational status shall be conducted at that conference, determining that such placement is no longer required, and that termination of the placement is in the best interests of the child, or that the child was inappropriately placed.

- a) When the district decides to terminate a special education placement, the parents shall be notified at least ten (10) calendar days prior to such termination.
- b) If the parents request termination of special education placement, the district shall review the child's educational status to determine whether the requested termination is in the best interests of the child. If, pursuant to this review, a continuation of the placement is recommended by the district, the parents may request an impartial due process hearing.
- c) When the child's special education placement is terminated, a specific plan of transition, to include any provision of necessary related service and periodic followup, shall be developed and implemented.

## SUBPART J: IMPARTIAL DUE PROCESS HEARINGS

**Section 226.600 Calculation of Timelines**

For purposes of compliance with the requirements of Section 14-8.02a of the School Code [105 ICS 5/14-8.02a; see P.A. 89-632, effective August 14, 1996] and the timelines set forth in this Subpart J, "days" shall be construed in accordance with Section 1.11 of the Statute on Statutes [5 ICS 70/1.11].

**Section 226.605 Request for Hearing**

- a) A parent (as defined in Section 226.5 of this Part), a school district, or a student may request an impartial due process hearing.
- b) A hearing may be requested for, but not limited to, the following reasons:

- 1) Objection to signing consent for a proposed case study evaluation or initial placement.
- 2) Failure of the local school district, upon request of the parents, other persons having primary care and custody of the student, the student, or the State Board of Education (in this Subpart, the State Board), to provide a case study evaluation.
- 3) Failure of a local school district to consider evaluations completed by qualified professional personnel outside the school district.
- 4) Objection to a proposed special education placement, either an

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initial placement, a continuation of a previous placement, or a change in the placement.

- 5) Termination of a special education placement.
  - 6) Failure of the local school district to provide a special education placement consistent with the finding of the case study evaluation and the recommendations of the multidisciplinary conference.
  - 7) Failure of the local school district to provide the least restrictive special education placement appropriate to the student's needs.
  - 8) Provision of special education instructional or resource programs, or related services in an amount insufficient to meet the student's needs.
  - 9) Recommendation for the graduation of a student.
  - 10) Failure of the local school district to ensure compliance with the provisions of Section 226.40 of this Part.
  - 11) Failure of the local school district to comply with any provision of this Part or the School Code.
  - 12) Failure of the local school district to provide a student with a free appropriate public education.
- c) Receipt of a request for an impartial due process hearing shall cause the student to remain in his or her current education placement, unless a mutual agreement is reached between the parents and local school district, until the matter is resolved.
  - d) If the student is receiving no educational service and the parents are seeking initial placement in a public school, the student, with the consent of the parents, must be placed in the public school program until the completion of all the proceedings.

**Section 226.610 Information to Parents Concerning Right to Hearing**

The local school district shall be responsible for informing parents in writing of their right to a hearing and of the procedures to follow to make a request for such a hearing. The director of special education shall assist the parents in taking whatever action is necessary to utilize the hearing process. The local school district shall inform the parent of any free or low cost legal and other relevant services available in the area if the parent requests the information or if the parent or local school district initiates a hearing.

**Section 226.615 Procedure for Request**

Pursuant to Section 226.605 of this Part, the school district, the parent of any student resident within the district, or the student may request an impartial due process hearing. A parent's or student's request for a hearing shall be made, in writing, to the superintendent of the school district in which the student is a resident.

- a) If the district makes the request, it shall be sent in writing to the State Board, attention Division of Program Compliance, in Springfield,

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and at the same time a copy shall be sent to the other party. This letter shall include the information set forth in subsections (b)(1)(A), (C) and (D) of this Section.

- b) When the school district receives a request for a hearing from a parent or from a student, then within five days after its receipt of the request the district shall:

1) Send a letter to the State Board (attention Division of Program Compliance, in Springfield) requesting the appointment of an impartial due process hearing officer. This letter shall be delivered by certified mail or another means that provides written evidence of the delivery and shall include:

- A) the name, address, and telephone number of the student and the parent, and of the person making the request for the hearing, if it is someone other than the student or the parent;
- B) the date on which the request for the hearing was received by the local school district;
- C) the nature of the controversy to be resolved;
- D) the primary language spoken by the parents and student; and
- E) a copy of the parent's request.

2) Send to the person requesting the hearing, by certified mail or another means providing written evidence of delivery, a copy of the letter sent to the State Board.

- A) If the hearing has been requested by someone other than the student's parents, the district shall inform the parents by certified mail of the request and invite them to participate in the proceedings.
- B) All references to parents made in the remainder of this Subpart shall be understood to include both the parents and the person requesting the hearing.

## Section 226.620 Denial of Hearing Request

A request for an impartial due process hearing may not be denied for any reason.

## Section 226.622 Qualifications, Training, and Service of Impartial Due Process Hearing Officers

a) In order to be considered for training as an impartial due process hearing officer, an individual either must hold a master's degree or a juris doctor degree, or must hold a bachelor's degree in combination with relevant experience.

- 1) For purposes of this Subpart J, "relevant experience" means at least three years' experience, whether paid or voluntary, in special education, disability-related issues, or advocacy.
- 2) *Employees of the State Board of Education, school districts, special education cooperatives, state-operated elementary and*

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*secondary schools, regional service areas or centers, regional educational cooperatives, state-operated elementary and secondary schools or private providers of special education facilities or programs may not serve as impartial due process hearing officers.* (See Section 14-8.02a(c) of the School Code.)

- 3) Except as provided in Section 14-8.02a(f) of the School Code, former employees of, and current or former contractors to the State Board of Education, school districts, special education cooperatives, regional service areas or centers, regional educational cooperatives, state-operated elementary and secondary schools or private providers of special education facilities or programs shall not be disqualified as potential hearing officers by virtue of such employment or service.

b) An individual wishing to qualify as an impartial due process hearing officer shall submit an application to the State Board. In completing the application form, which shall be provided by the State Board, the individual shall disclose at least the following information:

- 1) name and address;
- 2) degree(s) held;
- 3) current employment status, including if applicable the employer's name and the title of the employee's position;
- 4) school district of residence; and
- 5) professional background and relevant experience.

c) Persons who have complied with the requirements of subsections (a) and (b) of this Section shall, if recommended by the Screening Committee pursuant to Section 14-8.02a(b) of the School Code, then complete a training course conducted as provided in Section 14-8.02a(d) of the School Code. Failure to complete this training course successfully shall result in ineligibility to serve as a hearing officer.

d) From among the candidates successfully completing the initial training, the Advisory Council on Education of Children with Disabilities shall select the number of hearing officers deemed necessary by the State Board of Education. Such selection shall be based upon objective criteria developed and made available to the public by the Advisory Council.

e) Each hearing officer shall at least annually attend a review session and/or training course authorized by the State Board. Failure to attend a required review session or training course shall result in the hearing officer's termination.

f) *Conditions of Service*

Hearing officers' terms of service and subsequent reappointment shall be as provided in Section 14-8.02a(d) and (e) of the School Code.

- 1) A hearing officer shall accept each case to which he or she is assigned, unless:

- A) the hearing officer is ill;
- B) the hearing officer has a personal, professional, or financial interest which would conflict with his or her objectivity with respect to a particular case; or

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- C) the hearing officer is ineligible to accept a particular case pursuant to Section 226.625(a) of this Part.
- 2) A hearing officer whose other commitments will interfere with his or her ability to accept cases for more than 15 days shall so notify the State Board of Education in writing.

**Section 226.625 Appointment of Impartial Due Process Hearing Officer**

- a) Upon receipt of a request for a hearing the State Board shall, within five days and using the rotation system called for in Section 14-8.02a(f) of the School Code, appoint an impartial due process hearing officer and notify that individual and the parties of his or her appointment. Prior to making any appointment, the State Board shall review the background of the prospective appointee in order to establish that:
- 1) the individual has never been employed by or administratively connected with the school district or special education cooperative involved in the case;
  - 2) the individual is not a resident of the district involved; and
  - 3) the prospective appointee has no apparent personal, professional, or financial interest that would interfere with his or her objectivity regarding the matter at issue.
- b) An appointee who does not meet the requirements set forth in subsection (a) of this Section shall recuse himself or herself within five days after receiving notification of the appointment. Notification to the State Board of such recusal may occur by telephone, provided that a written statement is also supplied.
- c) *A party to a due process hearing shall be permitted one substitution of a hearing officer as a matter of right (Section 14-8.02a(f) of the School Code).* A request for a substitute hearing officer shall be made in writing to the State Board of Education within five days after receipt of notification of the hearing officer's appointment. In the event that both parties submit written requests on the same day and both should be received simultaneously, the State Board of Education shall deem the substitution to have been at the request of the party initially requesting the hearing. The right of the other party to a substitution will thereby be absolutely protected.
- d) Section 14-8.02a(f) of the School Code contemplates two situations requiring the appointment of a hearing officer other than the individual who originally receives the case under the rotation system and specifies different methods of selecting a replacement.
- 1) When the appointed hearing officer is unavailable or recuses himself or herself before the parties are notified of his or her appointment, the State Board shall appoint the next scheduled hearing officer under the rotation system.
  - 2) When a hearing officer recuses himself or herself after learning the circumstances of a case, or when a party to the hearing submits a proper request for substitution, the State Board shall,

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within five days, select and appoint another hearing officer at random.

**Section 226.632 Scheduling the Hearing and Pre-Hearing Conference**

- a) Within five days after receiving written notification by the State Board, the appointed hearing officer shall contact the parties to determine a time and place reasonably convenient to the parties and otherwise in accordance with Section 14-8.02a(g) of the School Code for convening the hearing and pre-hearing conference.
- b) The hearing officer shall provide the parties at least ten days' written notice of the dates, times, and locations of the pre-hearing conference and the hearing.
- c) Either party may request a delay in convening the hearing and/or pre-hearing conference. The party requesting a delay shall do so in writing to the hearing officer, with a copy sent at the same time to the other party. The requesting party shall set forth the reasons for the request and the hearing officer shall, upon receiving the request, and subject to the provisions of Section 226.636(c) of this Part, either grant or deny the request, and shall so inform the parties and the State Board of Education in writing. If necessary, the hearing officer shall determine a new time and date for convening the hearing and/or pre-hearing conference.

- 1) If the parties jointly propose a delay in convening the hearing or pre-hearing conference, it shall be delayed as agreed. The hearing officer, being advised of such agreement, shall confirm the delay in writing to the parties and the State Board of Education. Such notice shall become part of the administrative record.
- 2) If the parties cannot agree to a mutually convenient time and place for convening the hearing and/or pre-hearing conference, the hearing officer shall fix such time and place, notify the parties in writing, and proceed to convene and conduct the pre-hearing conference and hearing, provided that the delay shall not continue for a period longer than necessitated by the circumstances that precipitated the delay.

**Section 226.633 Conducting the Pre-Hearing Conference**

- a) The hearing officer shall convene the pre-hearing conference in accordance with Section 14-8.02a(g) of the School Code.
- b) Any party to the pre-hearing conference shall be permitted to participate by teleconference (Section 14-8.02a(g) of the School Code). It shall be the responsibility of the parties to ensure that any information required at the pre-hearing conference is received by the hearing officer and the other party at or prior to the conference.
- c) At the conclusion of the pre-hearing conference, the hearing officer shall prepare a report of the conference that shall be entered into



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the hearing issued. The report shall include, but need not be limited to:

- 1) accommodations that have been made for the parties or witnesses;
- 2) a determination of the relevance and materiality of documents or witnesses, if raised by a party or the hearing officer; and
- 3) such stipulations of fact as have been agreed to during the pre-hearing conference.

**Section 226.636 Rights of the Parties Prior to the Hearing**

- a) The parties have the right to be represented at their own expense by counsel, or to be represented and assisted by other persons having special knowledge of this Part. The district shall inform the parents of any free or low cost legal services which may be available in their area, and of the availability of publicly funded advocacy services.
- b) The parents may inspect and review all school records pertaining to their child and, subject to the provisions of 23 Ill. Adm. Code 375.50 (Student Records), may obtain copies of any such records at their own expense.
- c) The parents shall have access to the district's list of independent evaluators, and may obtain an independent evaluation of their child at their own expense. If acquisition of a completed independent evaluation requires a delay in convening the hearing, the parents shall request such delay as provided in Section 226.632(c) of this Part. The hearing officer shall thereupon delay the hearing until such time as the independent evaluation is completed, the report is available, and the opposing party has been afforded, in the judgment of the hearing officer, a reasonable opportunity to review it. The parents may ask the hearing officer to determine whether an independent evaluation is needed. The parents may ask the hearing officer to consider whether an independent evaluation is needed. If the hearing officer concludes, after reviewing the available information, that an independent evaluation is necessary to inform the hearing officer concerning the services to which the student may be entitled, it shall be so ordered and provided at local school district expense. The hearing officer shall thereupon delay the hearing as provided for herein.
- d) Either party to the hearing has the right to the disclosure at least five days prior to the hearing of any evidence to be introduced.
- e) Either party may compel the attendance of any school district employee at the hearing, or any other person who may have information relevant to the needs, abilities, the proposed program, or the status of the student. At the request of either party, the hearing officer shall issue subpoenas to compel the testimony of witnesses or the production of documents relevant to the case at issue. If any person refuses to comply with a subpoena issued under this Section, court action may be sought as provided in Section 14-8.02a(g) of the School Code.

- f) Either party, or any other person participating in the hearing, may request that an interpreter be available during the hearing because one of the participants is hearing impaired and/or uses a primary language other than English. Such interpreters shall be provided at the public provider's expense.
- g) The student's educational placement shall not be changed pending completion of the hearing except as provided in Section 14-8.02a(j) of the School Code.

**Section 226.640 Rights of the Parties During the Hearing**

- a) The hearing officer shall conduct the hearing in a fair, impartial and orderly manner. The hearing officer shall afford each party an opportunity to present the evidence, testimony, and arguments each party believes necessary to support and/or clarify the issues in dispute and the relief the party is requesting. The hearing officer shall regulate the course of the hearing and the conduct of the parties or their counsel.
- b) The hearing shall be closed to the public unless the parents of the child specifically request that it be an open hearing. The hearing officer shall advise the parents of their right to have the hearing open to the public, and if the parents make such a request, the hearing shall be open.
- c) Pursuant to 34 CFR 300.508(b)(1), the parent has the right to have the child who is the subject of the hearing present at the hearing. The hearing officer's authority under Section 14-8.02(g) of the School Code (Ill. Rev. Stat. 1991, ch. 122, par. 14-8.02(g)) [105 ILCS 5/14-8.02(g)] to find that the attendance of the child is not in the child's best interest or is detrimental to the child is limited to circumstances where, after notice from the hearing officer to the parents and an opportunity for response by the parents, the hearing officer finds that the attendance of the child will preclude the proceedings from being conducted consistently with the requirements of due process set forth in the Individuals with Disabilities Act (20 U.S.C. 1411-1420) and the rules of the United States Department of Education (34 CFR 300.500 - 300.514). The hearing officer shall specify in writing the basis for any finding that the attendance of the child will preclude the proceedings from being conducted consistently with the requirements of due process.
- d) The parties shall have the right to confront and cross-examine witnesses, including those whose attendance they have compelled by issuance of a subpoena.
- e) Either party may prohibit the introduction of evidence which was not disclosed to that party at least five (5) calendar days prior to the hearing.

**Section 226.645 Powers and Duties of Hearing Officer**

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a) *Once appointed, the impartial due process hearing officer shall not communicate with the State Board of Education or its employees concerning the hearing and shall not initiate or participate in any ex parte communications with the parties, except as provided in Section 14-8.02a(g) of the School Code.*

b) *The hearing officer shall disclose any actual or potential conflict of interest to the parties upon learning of such a conflict.*

c) *The hearing officer shall conduct the hearing and, with respect thereto, shall have but not be limited to the following powers:*

- 1) To administer, or to authorize the court reporter to administer, oaths;
  - 2) To examine witnesses;
  - 3) To issue subpoenas;
  - 4) To rule upon the admissibility of evidence;
  - 5) To order independent evaluations;
  - 6) To grant specific extensions of time;
  - 7) To read into the hearing record any stipulations of fact and other matters agreed upon at the pre-hearing conference and to enter into the record any pre-hearing orders;
  - 8) To render decisions and issue orders and clarifications.
- d) *The hearing officer shall comply with applicable timelines established in Section 14-8.02a of the School Code.*

**Section 226.670 Record of Proceedings**

The hearing officer shall ensure that a verbatim record of the hearing is made, either by tape recording or by a court reporter. The hearing officer shall also ensure that all written evidence presented at the hearing is marked to indicate the party offering the evidence and is made part of the administrative record. The parents or the district may obtain a copy of the verbatim record of the hearing. The State Board and the district shall share equally the cost of providing these copies.

**Section 226.675 Decision of Hearing Officer; Clarification**

a) Within ten days after the conclusion of the hearing, the hearing officer shall issue a written decision which sets forth the issues in dispute, findings of fact based upon the evidence and testimony presented, and the hearing officer's conclusions of law and orders. The hearing officer shall determine whether the evidence establishes that the student has needs which require special education services, and if so whether such services and placement as are being proposed or provided by the district are appropriate given the student's identified needs. The hearing officer shall order the parties to take all steps necessary to ensure appropriate placement and services for any student found to be eligible for special education services. The hearing officer shall specify the procedures necessary to ensure timely compliance with his or her order, in accordance with Section

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14-8.02a(j) of the School Code.

b) The hearing officer's decision shall be sent by certified mail to the parties enumerated in Section 14-8.02a(h) of the School Code. The decision shall be translated into the native language of the parents if their primary language is other than English.

c) The written decision shall be binding upon the parties unless a party aggrieved by the decision commences a civil action as provided in Section 14-8.02a(i) of the School Code.

d) As provided in Section 14-8.02a(h) of the School Code, the hearing officer shall retain jurisdiction after issuance of his or her decision for the sole purpose of considering a request for clarification. A request for clarification shall be submitted and acted upon as provided in Section 14-8.02a(h) of the School Code.

e) The hearing provision, if not appealed pursuant to subsection (c) of this Section, shall be enforced by the State Board as provided in Section 226.692 of this Part.

**Section 226.692 Monitoring and Enforcement of Decisions; Notice of Funding Ineligibility**

Upon receipt of the hearing officer's decision, the State Board of Education shall review the decision and monitor compliance by the parties with the terms of the decision. If the district fails to comply with the decision in the time specified by the hearing officer, the State Board of Education shall notify the parties in writing by certified mail that it finds the district to be in noncompliance with the decision, and that the noncompliance may result in loss of recognition status of the district's programs by the state, withholding of state or federal funds which the district would otherwise be eligible to receive, or in other enforcement action unless the district remedies the noncompliance within the time period specified in the notice of noncompliance.

**Section 226.695 Reporting of Decisions**

The State Board of Education shall, after deleting all personally identifiable information and indexing by subject matter, make the decisions of impartial due process hearing officers available to the Illinois State Advisory Council on Education of Children with Disabilities, to impartial due process hearing officers, and to the Screening Committee established pursuant to Section 14-9.02a(b) of the School Code. This information shall also be available to other interested parties upon request.

SUBPART K: SURROGATE PARENTS

**Section 226.710 Surrogate Parents**

The concept of "surrogate parents" will be implemented by guaranteeing procedural safeguards to children who are wards of the state pursuant to the provision of the Juvenile Court Act. (Ill. Rev. Stat. 1981, ch. 37, pars.

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701-1 through 708-4)

- a) When a child is a ward of the state, the child's court-appointed guardian or custodian shall be notified of the following:
  - 1) Referral for a case study evaluation (See Section 226-515)
  - 2) The time and place of the conference at which the IEP will be developed, and invited to attend and participate in that conference
- 3) The proposed placement
- 4) Continuation, change or termination of placement (See Sections 226-580, 226-585 and 226-590)
- b) The court-appointed guardian or custodian shall be entitled to rights and privileges accorded to the natural parent of a child resident in the district, i.e., an impartial due process hearing, etc.

## Section 226-720 Contacting Parents of Child

The local school district shall make all reasonable attempts to contact the parents of the child who has been referred. If the parent cannot be identified, the parent's whereabouts cannot be discovered, or the child is a ward of the state, the district shall request the appointment of a surrogate parent by the State Board of Education.

- a) The local school district shall provide documentation of their efforts to contact the parents.
- b) The local school district shall provide information on the racial, linguistic and cultural background of the child who is in need of a surrogate parent.

## Section 226-730 Appointment of Surrogate Parent

Within five (5) calendar days of receipt of the request for the appointment of a surrogate parent, the State Superintendent of Education shall consider the request. If the State Superintendent of Education decides that a surrogate parent is required, the State Board of Education shall appoint one person to represent the interests of the child. Such an appointment shall be made not more than ten (10) calendar days after receipt of the district's request.

- a) A surrogate parent may be any responsible citizen other than an employee of the State Board of Education, the local school district in which the child is enrolled, an agency created by joint agreement, or an agency involved in the education or care of the student.
- b) The surrogate parent must meet the following criteria:
  - 1) All reasonable attempts shall be made to secure a surrogate parent whose racial, linguistic, and cultural background is similar to the child's.
  - 2) The surrogate parent must be trained by the State Board of Education.
  - 3) The surrogate parent has no interest that conflicts with the interests of the child he or she represents.

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## Section 226-740 Notice to School District Concerning Surrogate Parent

Pursuant to the appointment of a surrogate parent, the State Board of Education shall provide written notification to the local school district specifying the name and address of the surrogate parent, the specific responsibilities to be fulfilled, and the length of time for which the appointment is valid.

## Section 226-750 Expenses for Surrogate Parent

The State Board of Education will pay expenses to the surrogate parent for his or her services.

## Section 226-760 Notification that Surrogate Parent is Not Needed

If the State Board of Education determines that a surrogate parent is not needed, the local school district shall be notified, in writing, regarding this decision. As appropriate, this notification shall indicate the reasons for the decision and/or direct the local school district regarding further action in the matter.

## Section 226-770 Replacement by Natural Parent

If the child's natural parent becomes available or accessible, the State Board of Education shall withdraw the services of the surrogate parent specified in Section 226-740 above.

## Section 226-780 Immunity of Surrogate Parent

Any person participating in good faith as a surrogate parent on behalf of the child before school officials or a hearing officer shall have immunity from civil or criminal liability that otherwise might result by reason of such participation, except in cases of willful and wanton misconduct.

## SUBPART L: SPECIAL EDUCATION PERSONNEL

## Section 226-810 Employment of Sufficient and Trained Personnel

Professional and noncertified personnel shall be employed in sufficient numbers with appropriate qualifications to deliver to each exceptional child resident in the district the special education program necessary.

## Section 226-820 Qualifications of Professional Instructional Personnel

Professional instructional personnel shall qualify under any one of the following circumstances:

- a) Hold standard special Illinois Teachers Certificate, Type 10, in the area of responsibility.
- b) Hold standard Illinois Teachers Certificate and have met full approval

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- outlined by the State Board of Education in 23 Ill. Adm. Code 25, Certification.
- c) Hold standard Illinois Teachers Certificate and receive approval by the State Board of Education for specialized functioning in relation to a special education program.
  - d) In Chicago, hold a valid certificate issued by the Board of Examiners of Chicago Public Schools which entitles the holder to teach in a specific area of responsibility.

**Section 226-830 Qualifications of Other Professional Personnel**

Other certified personnel employed by the school district to provide special education services shall hold accreditation appropriate to the area of responsibility and shall be approved by the State Board of Education in 23 Ill. Adm. Code 25, Certification.

**Section 226-838 Qualified Bilingual Specialists**

Professional staff otherwise qualified pursuant to this Subpart I shall be considered "qualified bilingual specialists" if they meet the applicable requirements set forth in this Section.

- a) A holder of a special certificate endorsed in the area of responsibility pursuant to 23 Ill. Adm. Code 25.40 or 25.43 shall successfully complete a language examination in the non-English language of instruction and shall have completed coursework covering:
  - 1) psychological/educational assessment of students with disabilities who have limited English proficiency;
  - 2) theoretical foundations of bilingual education and English as a second language, including the study of first and second language acquisition; and
  - 3) Methods and materials for teaching students of limited English proficiency or students with disabilities who have limited English proficiency.
- b) A holder of an early childhood, elementary, or high school certificate who also holds special education approval in the area of responsibility shall successfully complete a language examination in the non-English language of instruction and shall have completed the coursework listed in subsections (a)(1), (2), and (3) of this Section.
- c) A holder of an early childhood, elementary, or high school certificate who also holds approval to teach bilingual education or English as a second language shall have completed coursework covering:
  - 1) Methods for teaching in the special education area of assignment;
  - 2) psychological/educational assessment of students with disabilities who have limited English proficiency, or psychological diagnosis for children with all types of disabilities; and
  - 3) Characteristics of students, or characteristics of students with limited English proficiency specifically, in the special

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- education area of assignment.
- d) A holder of a transitional bilingual certificate issued pursuant to 23 Ill. Adm. Code 25.90 and endorsed for the language of assignment shall have completed two years of successful teaching experience and have completed coursework covering:
    - 1) Survey of children with all types of disabilities;
    - 2) Assessment of the bilingual student, or psychological/educational assessment of the student with disabilities who has limited English proficiency;
    - 3) Theoretical foundations of bilingual education and English as a second language, including the study of first and second language acquisition;
    - 4) Methods for teaching in the special education area of assignment; and
    - 5) Characteristics of students, or characteristics of students with limited English proficiency specifically, in the special education area of assignment.

- e) A holder of a school service personnel certificate endorsed for guidance, school social work, or school psychology shall successfully complete an examination in the non-English language and shall have completed coursework in assessment of the bilingual student or psychological/educational assessment of the student with disabilities who has limited English proficiency.

**Section 226-840 Qualifications of Directors and Assistant Directors**

Each director and assistant director of special education shall hold a valid administrative certificate and shall meet requirements for approval as outlined by the State Board in 23 Ill. Adm. Code 25, Certification.

**Section 226-850 Qualifications of Supervisory Personnel**

Supervisory personnel shall hold a valid certificate in the area of responsibility and shall meet requirements for approval as outlined by the State Board of Education in 23 Ill. Adm. Code 25, Certification.

**Section 226-860 Qualifications of Chief Administrator**

The chief administrator of a special school shall hold a principal's certificate and approval in a least one area of exceptionality served by the school.

**Section 226-870 Necessary Noncertified Personnel**

Necessary noncertified personnel employed in classes, programs, or services in all areas of special education shall be under the direct supervision of a qualified specialist.

- a) All necessary noncertified personnel employed in relation to special



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education instructional or resource programs or related services shall be provided with inservice training experiences appropriate to the nature of their responsibilities.

- b) For noncertified personnel working in a special education instructional program or resource programs, such inservice training shall be in lieu of the requirements for noncertified personnel set by the State Teacher Certification Board.

**Section 226.880 Function of Special Education Personnel**

Special education personnel shall function as members of the local building or district staff with all attendant privileges and responsibilities.

**Section 226.890 Personnel Development Program**

A comprehensive personnel development program shall be developed and implemented for all personnel involved with the education of exceptional children.

## SUBPART M: SPECIAL TRANSPORTATION

**Section 226.910 Eligibility for Transportation**

Each child who exhibits one or more exceptional characteristics as described in Article 14 of The School Code shall be eligible for special transportation. Such transportation shall be provided as the child's exceptionalities or the program location may require.

**Section 226.920 Vehicles Used**

Vehicles utilized for special transportation shall be adapted to the specific needs of the children receiving this service.

**Section 226.930 Training of Personnel**

Personnel responsible for special transportation shall be given inservice experiences which will enable them to understand and appropriately relate to exceptional children.

**Section 226.935 Provision for Transportation**

The provisions for transportation services and vehicle adaptation shall be included in the IEP.

**Section 226.938 Change in Mode of Transportation**

When there is a change in the student's transportation from special bus to another mode of transportation such as regular bus or walking to school, this

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change shall be included in the IEP.

**Section 226.940 Scheduling of Transportation**

Special transportation shall be scheduled in such a way that a child's health and ability to relate to the educational experiences provided are not adversely affected. Every effort should be made to limit the child's total travel time to not more than one (1) hour each way to and from the special education facility.

**Section 226.950 Transportation and Instructional Schedule**

The special education student's arrival and departure times shall insure a full instructional day as provided for in the IEP.

**Section 226.960 Transportation to a Residential School**

When a student is placed in a residential facility in accordance with these regulations, the school district shall provide transportation services for the initial placement in the facility and for the return home at the close of the school term which is applicable to the student's placement. In the event the school district assumes responsibility for transportation arrangements, it shall provide reasonable notice to parents of departure dates and times. It shall, in all instances, submit notification to the parents within 48 hours of completing those arrangements. The mode(s) of travel and degree of support and supervision to be provided shall be included in the IEP. The school district shall also provide transportation services in accordance with the following criteria:

- a) The school district shall provide transportation services for one round trip home, usually at a midterm break or at another time as mutually agreed by the school district and the parents, and at such additional times as the facility is to be temporarily closed.
- b) The school district shall provide round trip transportation services at any time that the school district seeks additional diagnostic assessments of the student, if a student who is over eighteen (18) seeks to be present during a multi-disciplinary conference or a due process hearing, or if the parent wishes the student to be present during a due process hearing.
- c) The school district shall provide round trip transportation services for emergency reasons in cases of serious illness of the student or of death or imminent death of an individual in the student's immediate family. Immediate family shall be understood to mean a parent, a grandparent, a sibling, or any person who resides in the student's immediate household. If the school district questions the severity of an illness of the student or an immediate family member, it may require the opinion of a licensed physician to corroborate the severity of the illness.
- d) The school district may also provide transportation services to

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encourage family contacts and/or to reintegrate the student in the home and the home community. The school district shall have the authority to determine, upon consultation with the parents, when transportation is appropriate for these reasons and shall incorporate this decision with the specific reasons in the student's IEP.

- e) Reimbursement from the State Board of Education for transportation services in relationship to residential placements shall authorized when the school district reports that one or more of these criteria have been met.

## SUBPART N: EVALUATION OF SPECIAL EDUCATION

**Section 226.1010 Evaluation By State Board**

The extent to which the local school district is fulfilling its responsibilities to exceptional children shall be determined by the State Board of Education.

Official representatives of the State Board of Education shall be authorized to examine all documentation, including student records, which would facilitate such determination.

**Section 226.1020 Bases of Evaluation**

Evaluation by the State Board of Education shall focus on the local district's provision of special education services, on each special education cooperative organization of which it is a participant, and on community resources utilized by the district.

**Section 226.1030 Elements of State Board Evaluation**

Evaluation of special education programs and services shall be based on all of the following elements:

- a) A Special Education Services Comprehensive Plan. This plan shall describe the district's provision of special education services, its plan for program involvement, and those factors unique to the individual district or cooperative which must be considered in the evaluation. This plan shall be filed with the State Board of Education and revised at least triannually.
- b) Continuous Internal Evaluation. The district and the cooperative unit designated to provide special education services shall develop and implement procedures which assess the extent to which exceptional children are being adequately served and the effectiveness of each special education program and service.
- c) Recognition Criteria for Special Education. These criteria shall be assessed through an indeph study conducted on site by a team representing the Department of Recognition and Supervision of the State Board of Education.
- d) Records must be maintained to demonstrate compliance with assurances

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agreed to in the applications for state and federal funds. These records will be monitored by the staff of the State Board of Education, Department of Specialized Educational Services.

**Section 226.1040 Availability of State Board Evaluation**

Written reports of the results of the evaluation conducted by the State Board of Education and any subsequent recommendations or actions shall be provided to the appropriate board(s) of education. Reports of the evaluation shall be considered in the public domain.

**Section 226.1050 Effect of Evaluation on School District**

The recognition status of the local school district shall be affected by its provision of special services.

## SUBPART O: SPECIAL EDUCATION SERVICES FOR CHILDREN

## IN RESIDENTIAL CARE FACILITIES

**Section 226.1110 Equal Access for Children in Residential Care Facilities**

The purpose of Section 14-7.03 of The School Code shall be considered to assure equal access to educational opportunity for exceptional children living in residential care facilities.

**Section 226.1112 Definitions from Section 14-7.03**

For the implementation of Section 14-7.03, the following definitions shall be utilized:

"Care" means that responsibility for all or part of the life development of a child has been assumed by the designated unit through guardianship, wardship, custody, or inpatient status.

"Children's Home" means any licensed residential institution, other than those directly operated by the State of Illinois, which cares for handicapped, neglected, delinquent, and/or dependent children.

"Foster Family Home" means an individual residential unit which cares for one or more handicapped, neglected, delinquent, or dependent children who are not members of the primary family. Such a home accepts foster children for care under specific and written authority of a municipal, county, or state agency authorized to make such placement.

"Other State Agencies" means residential institutions which are directly operated and primarily funded by an agency of the State of Illinois.

"Orphanage" means any licensed residential institution, other than those directly sponsored by the State of Illinois, which cares for dependent children.

"State Residential Units" means houses, housing units, or housing

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accommodations which are on the grounds of any welfare, penal, or educational institution which is maintained and operated by the State of Illinois on property owned by the State of Illinois.

**Section 226.1115 Exclusions When Implementing Section 14-7.03**

- a) Any individual residential unit which received financial support from the State of Illinois for the maintenance of the family (e.g., homes whose primary financial support is received from one or more of the public assistance programs), unless the unit qualifies as a "foster family home."
- b) Any residential facility which collects service charges and other payments in lieu of taxes (e.g., low-income housing units built and maintained with public funds). However, an individual unit in such a facility would be included if it qualified as a "foster family home."
- c) Any bona fide school in which children are primarily taught branches of education corresponding to those taught in public schools, grades one through twelve.
- d) Any residential unit maintained by the State of Illinois as housing for students in the state-supported institutions of higher education (e.g., university dormitories).

**Section 226.1120 Enrollment in District Required**

All children who live in eligible residential care facilities and who are to receive educational services from the local school district must be enrolled in that district.

**Section 226.1125 Requirements for Educational Program on Site of Orphanage or Children's Home**

When the local school district establishes and maintains an educational program on the site of an orphanage or children's home, that program must be appropriate to the needs of the students, and must be in accordance with the least restrictive environment.

- a) Handicapped children shall be provided with a special education program which is in compliance with this Part.
- b) Educational programs which are provided to handicapped children on the site of an orphanage or children's home and which are not in compliance with this Part shall not be eligible for reimbursement under Section 14-7.03 or Section 18-3 of The School Code (Ill. Rev. Stat. 1981, ch. 122, pars. 14-7.03 and 18-3)

**Section 226.1130 Approval of Special Education Program at Orphanage or Children's Home**

If the local district wishes to establish and maintain a special education program on the site of an orphanage or children's home, the program must be

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approved by the State Board of Education prior to its implementation.

**Section 226.1135 Least Restrictive Environment**

When children from an orphanage, children's home, foster family home, state agency, or state residential unit attend special education classes in the public school which is maintained by the local district, or the cooperative in which it is a participant, every effort shall be made to serve these students in the least restrictive environment.

**Section 226.1140 IEP for All Children**

All exceptional children specified in this Subpart of this Part shall have an IEP.

**Section 226.1145 Compliance With This Part Subject to State Board of Education Evaluation**

All special education programs and services provided by the public schools to exceptional children from orphanages, children's homes, foster family homes, other state agencies, or state residential units shall be in compliance with this Part and shall be subject to evaluation by the State Board of Education.

**Section 226.1150 Criteria for Eligibility of Children**

An individual child shall be eligible for special education services under Section 14-7.03 if he or she meets all of the following criteria:

- a) He/she is a resident of one of the residential care facilities described in Section 226.1112.
- b) He/she would not be a resident of that school district except by virtue of his or her placement in one of the residential care facilities described in Section 226.1112.
- c) He/she has been declared eligible according to this Part.

**Section 226.1155 Resident Children Eligible for All Privileges**

Children resident in a residential care facility are entitled to all privileges and services provided by that district.

**Section 226.1160 Local District Policies Applicable**

Children resident in a residential care facility and enrolled in the local school district shall be subject to all rules and policies of that district.

**Section 226.1170 Communications Regarding Child's Special Education**

All communication regarding the child's special education program shall be directed to the parents and when appropriate to the administrator of the

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residential care facility.

**Section 226.1175 Reimbursement**

Individual reimbursement shall be made under Section 14-7.03 of The School Code only for those children who have been declared eligible under Sections 226.1120 and 226.1150 of this Part.

**Section 226.1180 Possible Waiver of Sections 226.1120 and 226.1150**

When a special education program is maintained on the site of an orphanage or children's home and when the children in that program are highly transient, reimbursement may be approved for the cost of maintaining said program. In such instances Section 226.1120 may be waived if the child is enrolled in another public school district in the State of Illinois. Section 226.1150(b) may also be waived under this program.

**Section 226.1185 Computation of District's Reimbursement**

The amount of reimbursement for which a district shall be eligible under Section 14-7.03 shall be computed by determining the actual cost of maintaining the program. All special education and related services shall be provided at no cost to the parents.

- a) The costs for administration and supervision shall be computed on the percentage basis that the average daily membership of children in the special classes bears to the total average daily membership of that district.
- b) Costs for the use of building facilities shall not exceed 10% of the expenditures of the classes.
- c) All payments authorized by law, including state or federal grants for the education of children, shall be deducted in tuition or program reimbursement.
- d) Programs and services provided under the auspices of, and funded by, Public Law 89-750 shall not be considered in the computation of tuition or program reimbursement.
- e) When a child from an eligible residential care facility is receiving one or more special education related services while remaining in the standard educational program, the district may claim reimbursement under Section 14-7.03 and/or Sections 18-3 and 18-4; however, the total combined reimbursement shall not exceed 100% of the costs incurred by the district for the education of that child.
- f) Total reimbursement for a child who is living in an eligible residential care facility and who has been placed in an eligible nonpublic special education program shall not exceed the amount authorized under Section 14-7.02 of The School Code.

**Section 226.1190 Preapproval Application**

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Each district eligible for reimbursement under Section 14-7.03 shall file a preapproval application within 30 days after the initiation of the program(s). The application shall include a per capita cost estimate on forms provided by the State Board of Education.

**Section 226.1195 Documentation of Expenses**

In all instances, the district making claim under Section 14-7.03 shall maintain complete and accurate documentation of the expenses for which the claim is being made. The documentation shall be made available for review by the State Board of Education.



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1) Heading of the Part: Special Education

2) Code Citation: 23 Ill. Adm. Code 226

3) Section Numbers: Proposed Action:

226.10	New Section
226.50	New Section
226.60	New Section
226.75	New Section
226.100	New Section
226.110	New Section
226.120	New Section
226.130	New Section
226.140	New Section
226.150	New Section
226.160	New Section
226.170	New Section
226.180	New Section
226.190	New Section
226.200	New Section
226.210	New Section
226.220	New Section
226.230	New Section
226.240	New Section
226.250	New Section
226.260	New Section
226.300	New Section
226.310	New Section
226.320	New Section
226.330	New Section
226.340	New Section
226.350	New Section
226.400	New Section
226.410	New Section
226.420	New Section
226.430	New Section
226.440	New Section
226.500	New Section
226.510	New Section
226.520	New Section
226.530	New Section
226.540	New Section
226.550	New Section
226.560	New Section
226.570	New Section
226.600	New Section
226.605	New Section
226.610	New Section

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226.615	New Section
226.620	New Section
226.625	New Section
226.630	New Section
226.635	New Section
226.640	New Section
226.645	New Section
226.650	New Section
226.655	New Section
226.660	New Section
226.665	New Section
226.670	New Section
226.675	New Section
226.680	New Section
226.690	New Section
226.700	New Section
226.710	New Section
226.720	New Section
226.730	New Section
226.740	New Section
226.750	New Section
226.760	New Section
226.770	New Section
226.800	New Section
226.810	New Section
226.820	New Section
226.830	New Section
226.840	New Section

4) Statutory Authority: 105 ILCS 5/Art. 14 and 2-3.6

5) A Complete Description of the Subjects and Issues Involved: This rulemaking responds to the 1997 reauthorization of the Individuals with Disabilities Education Act (IDEA) and the recent issuance of final federal regulations implementing the changes in that Act. Extensive revisions are needed throughout the rules for special education, making it advisable to repeal the existing set and prepare a comprehensive new document to take its place.

6) Will this proposed rule replace an emergency rule currently in effect? No

7) Does this rulemaking contain an automatic repeal date? No

8) Does this proposed rule contain incorporations by reference? The rules do not contain an incorporation by reference under Section 5-7.5 of the Illinois Administrative Procedure Act.

9) Are there any other proposed amendments pending on this Part? The

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existing Part 226 is being repealed concurrently with the proposal of these new rules.  
10) Statement of Statewide Policy Objectives: This rulemaking will not create or enlarge a State mandate.

11) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking: Written comments may be submitted within 60 days of the publication of this notice to:

Sally Vogl  
Agency Rules Coordinator  
Illinois State Board of Education  
100 North First Street  
Springfield, Illinois 62777  
(217) 782-3950

Comments on the rules will also be taken at the public hearings described in the Notice of Public Hearings on Proposed Rules found on page \_\_\_\_ of this issue.

12) Initial Regulatory Flexibility Analysis:

- A) Types of small businesses, small municipalities and not for profit corporations affected: None
- B) Reporting, bookkeeping or other procedures required for compliance: Submission of required personnel reporting documents; observation of required timelines for multiple aspects of the administration of special education.
- C) Types of professional skills necessary for compliance: Special education administrative expertise.

13) Regulatory Agenda on which this rulemaking was summarized: This rule was not included on either of the 2 most recent agendas because: It had already been included in an agenda shortly after the federal legislation was reauthorized.

The full text of the Proposed Rules begins on the next page:

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TITLE 23: EDUCATION AND CULTURAL RESOURCES  
SUBTITLE A: EDUCATION  
CHAPTER I: STATE BOARD OF EDUCATION  
SUBCHAPTER f: INSTRUCTION FOR SPECIFIC STUDENT POPULATIONS

PART 226  
SPECIAL EDUCATION  
SUBPART A: GENERAL

Section  
226.10 Purpose  
226.50 Requirements for a Free Appropriate Public Education (FAPE)  
226.60 Charter Schools  
226.75 Definitions

SUBPART B: IDENTIFICATION OF ELIGIBLE CHILDREN

Section  
226.100 Child Find Responsibility  
226.110 Referral  
226.120 Child Review Team - Composition and Responsibilities  
226.130 Evaluation Requirements  
226.140 Mode(s) of Communication and Cultural Identification  
226.150 Case Study to be Nondiscriminatory  
226.160 Determination of Eligibility  
226.170 Criteria for Determining the Existence of a Specific Learning Disability  
226.180 Independent Educational Evaluation  
226.190 Reevaluation

SUBPART C: THE INDIVIDUALIZED EDUCATION PROGRAM (IEP)

Section  
226.200 General Requirements  
226.210 IEP Team  
226.220 Factors in Development of the IEP  
226.230 Content of the IEP  
226.240 Determination of Placement  
226.250 Child Aged Three Through Five  
226.260 Child Reaching Age Three

SUBPART D: PLACEMENT

Section  
226.300 Continuum of Placement Options  
226.310 Related Services  
226.320 Service to Students Living in Residential Care Facilities

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226.330 Placement by School District in State-Operated or Nonpublic Special  
Education Facilities  
226.340 Nonpublic Placements by Parents  
226.350 Service to Children in Private Schools

SUBPART E: DISCIPLINE

Section  
226.400 Disciplinary Actions  
226.410 Manifestation Determination Review  
226.420 Appeals  
226.430 Protection for Children Not Yet Eligible for Special Education  
226.440 Referral to and Action by Law Enforcement and Judicial Authorities

SUBPART F: PROCEDURAL SAFEGUARDS

Section  
226.500 Language of Notifications  
226.510 Notification of Parents' Rights  
226.520 Notification of District's Proposal  
226.530 Parents' Participation  
226.540 Consent  
226.550 Surrogate Parents  
226.560 Mediation  
226.570 Complaints

SUBPART G: DUE PROCESS

Section  
226.600 Calculation of Timelines  
226.605 Request for Hearing; Basis  
226.610 Information to Parents Concerning Right to Hearing  
226.615 Procedure for Request  
226.620 Denial of Hearing Request  
226.625 Rights of the Parties Related to Hearings  
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AUTHORITY: Implementing Article 14 and authorized by Section 2-3.6 of the School Code [105 ILCS 5/Art.14 and 2-3.6].

SOURCE: Adopted August 12, 1976; rules repealed and new emergency rules adopted at 2 Ill. Reg. 37, p. 29, effective September 1, 1978, for a maximum of 150 days; rules repealed and new rules adopted at 3 Ill. Reg. 5, p. 932, effective February 1, 1979; emergency amendment at 4 Ill. Reg. 38, p. 328, effective September 15, 1980, for a maximum of 150 days; amended at 5 Ill. Reg. 8021, effective July 22, 1981; amended at 6 Ill. Reg. 558, effective December 23, 1981; emergency amendment at 7 Ill. Reg. 6511, effective May 6, 1983, for a maximum of 150 days; emergency amendment at 7 Ill. Reg. 8949, effective July 15, 1983, for a maximum of 150 days; codified at 8 Ill. Reg. 6669; amended at 8 Ill. Reg. 7617, effective May 17, 1984; emergency amendment at 10 Ill. Reg. 3292, effective January 27, 1986, for a maximum of 150 days; emergency expired June 24, 1986; amended at 10 Ill. Reg. 18743, effective October 22, 1986; amended at 10 Ill. Reg. 19411, effective October 31, 1986; amended at 13 Ill. Reg. 15388, effective September 14, 1989; emergency amendment at 14 Ill. Reg. 11364, effective June 26, 1990, for a maximum of 150 days; emergency expired November 23, 1990; amended at 15 Ill. Reg. 40, effective December 24, 1990; amended at 16 Ill. Reg. 12868, effective August 10, 1992; emergency amendment at 17 Ill. Reg. 13622, effective August 3, 1993, for a maximum of 150 days; emergency expired December 31, 1993; amended at 18 Ill. Reg. 1930, effective January 24, 1994; amended at 19 Ill. Reg. 4685, effective March 11, 1994; amended at 18 Ill. Reg. 16318, effective October 25, 1994; amended at 19 Ill. Reg. 7207, effective May 10, 1995; amended at 20 Ill. Reg. 10908, effective

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August 5, 1996; amended at 21 Ill. Reg. 7655, effective July 1, 1997; Part repealed, new Part adopted at 23 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

## SUBPART A: GENERAL

## Section 226.10 Purpose

This Part establishes the requirements for the treatment of children and the provision of special education and related services pursuant to the Individuals with Disabilities Education Act ("IDEA") (20 USC 1400 et seq.) and Article 14 of the School Code [105 ILCS 5/Art.14]. The requirements of this Part shall apply in every instance when a child is or may be eligible for special education and related services.

## Section 226.50 Requirements for a Free Appropriate Public Education (FAPE)

Each local school district shall ensure that a free appropriate public education (FAPE) is available to each child with a disability who is between the ages of 3 and 21, resides in the State and is enrolled in the district, and requires special education and related services to address the adverse effect of the disability on his or her education. The special education and related services must be provided according to the child's individualized education program (IEP) at no cost to the parent and in accordance with this Part. As public schools, charter schools are also bound by these requirements, and children with disabilities who attend public charter schools and their parents retain all rights under this Part.

a) As part of this obligation, each local district shall develop and implement procedures for creating public awareness of special education and related services and for advising the public of the rights of children with disabilities.

- 1) All such procedures shall ensure that information is made available in each of the major languages represented in the local school district and in language that will be understandable to parents, regardless of ethnic or cultural background or hearing or visual abilities.
- 2) Procedures developed by a district pursuant to this Section shall include, but need not be limited to:
  - A) Annual notification to all parents in the district regarding the special education services available in or through that district and of their right to receive a copy of this Part upon request; and
  - B) An annual dissemination of information to the community served by the school district regarding the special education services available in or through the district and the rights of children with disabilities.
- 3) Documentation, including examples as appropriate, of the school district's efforts pursuant to this Section shall be maintained

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in the district's files.

- b) As part of this obligation, each local school district shall comply with the requirements for identifying, locating, and evaluating all children with disabilities set forth in Section 226.100 of this Part.
- c) A local school district is obligated to make FAPE available to each eligible child no later than the child's third birthday. (See Sections 226.110(d) and 226.260 of this Part.)
- d) The special education services and placement that constitute FAPE for a particular child shall be identified based on the child's unique needs and not on the child's disability. These services shall address all of the child's identified needs for special education and related services.
- e) The district shall provide nonacademic and extracurricular services and activities in a manner necessary to afford children with disabilities an equal opportunity to participate in those services and activities.
- f) The local school district shall ensure that no delay occurs in implementing a child's IEP, including any case in which the source of payment or provision of services to the child is being determined.
- g) No eligible child from three to 21 years of age may be permanently excluded from the public schools, either by direct action by the board of education, by indication of the district's inability to provide an educational program, or by informal agreement between the parents and the school district to allow the child to remain without an educational program.

- 1) Eligible children as defined in this Part who have been suspended or expelled from school must continue to receive special education services.
- 2) For the purposes of this Section, "suspended or expelled from school" means removed from the current educational placement for more than ten school days in a given school year.
- 3) The right to FAPE for an eligible child who has been suspended or expelled from school requires the resumption of services on the eleventh school day of removal from the current educational placement within any school year.
- 4) In providing FAPE to children with disabilities who have been suspended or expelled from school, a school district shall meet the requirements set forth in Subpart E of this Part.
- h) Transfer Students
  - 1) If a child who is receiving special education from a local school district transfers to another district, the new district is responsible for ensuring FAPE by providing special education and related services in conformity with an IEP. When a transfer student is presented for enrollment, the district shall enroll and initiate educational services to the student immediately. The new school district shall ensure that the child has an IEP in effect.
  - A) The district may adopt the IEP that the former local school



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district developed for the child. Such adoption does not require an IEP meeting if:

- i) a copy of the child's current IEP is available;
- ii) the parents indicate satisfaction with the current IEP; and

- iii) the new district determines that the current IEP is appropriate and can be implemented as written.

B) The district may develop a new IEP for the child if the school district or the parents do not believe the current IEP is appropriate. While the new IEP is under development, the district shall implement the IEP from the former district.

- 2) If the new school district is unable to obtain a copy of the child's current IEP or a verbal confirmation of the requirements of that IEP from the previous school district, the child shall be enrolled and served in the regular education setting until a copy of the current IEP is obtained or a new IEP is developed by the new school district. A district that does not receive a transfer student's IEP and other records within one week after the student's enrollment shall convene an IEP meeting and develop a new IEP.

- j) Jurisdictional Disputes  
Each school district is responsible for ensuring that no eligible child for whom services are sought is denied FAPE due to jurisdictional disputes among Illinois agencies. Provision of FAPE to such a student shall not preclude a district from seeking repayment for costs incurred from any other school district or entity that is determined responsible for such costs.

- k) Nothing in this Part relieves any participating agency of the responsibility for providing or paying for any services the agency would otherwise provide to students with disabilities who meet the eligibility criteria of that agency.

- l) Eligibility: Graduation or Completion of Program  
1) An eligible student who requires continued public school educational experience to facilitate his or her integration into society shall be eligible for such services until age 21.

- 2) Students who reach age 21 during a school year shall be allowed to complete that year.

- 3) The provision of FAPE is not required with respect to a student with a disability who has graduated with a regular high school diploma or its equivalent.

- 4) A student with a disability who has satisfactorily completed a secondary program shall be granted a regular high school diploma. At least one year prior to a student's anticipated graduation, both the parent and the student shall receive written notification that eligibility for public school special education services ends following the granting of a diploma and that the parent (or the student, if Section 226.690 of this Part applies)

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may request a review of the recommendation for graduation.

- 5) Students who have graduated but have not been awarded regular high school diplomas continue to be eligible to receive FAPE until reaching age 21.

- 1) Exception for Certain Students Incarcerated as Adults

Pursuant to 34 CFR 300.311, the right to receive FAPE does not extend to students from 18 to 21 years of age who are incarcerated and who were not identified as eligible and did not have IEPs in their educational placements immediately prior to incarceration.

## Section 226.60 Charter Schools

For purposes of the Individuals with Disabilities Education Act and this Part, charter schools established pursuant to Article 27A of the School Code [105 ILCS 5/Art. 27A] shall be treated either as schools within school districts or as local educational agencies in their own right.

- a) When a school's charter is issued by a local board of education pursuant to Section 27A-8 of the School Code [105 ILCS 5/27A-8], that charter school shall be considered as a school within the district over which that board of education exercises jurisdiction.

- b) When a school's charter is issued by the State Board of Education pursuant to Section 27A-9(f) of the School Code [105 ILCS 5/27A-9(f)], that charter school shall be considered as a local educational agency.

## Section 226.75 Definitions

**Assessment for Instructional Purposes:** Assessment procedures whose purpose is to improve instruction in the regular education environment and that are not normally used in the determination of students' eligibility for special education.

**Assistive Technology Device:** Any item, piece of equipment, or product or system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of a child with a disability.

**Behavioral Intervention:** An intervention based on the methods and empirical findings of behavioral science and designed to influence a child's actions or behaviors positively.

**Case Study Evaluation:** A series of procedures designed to provide information about a child's suspected disability; the nature and extent of the problems which are or will be adversely affecting his/her educational development; and the type of intervention and assistance needed to alleviate these problems.

**Child Review Team:** A group that convenes to identify the specific assessments required in order to evaluate a child's individual needs;

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to determine whether the child is eligible pursuant to this Part; and to conduct a Manifestation Determination Review if needed.

**Cultural Background Assessment:** An assessment done to determine how the child's culture or background affects his/her ability to function in school, as well as to determine whether the school and community are responding to the student appropriately.

**Cultural Identification:** Identifying the family's general cultural factors, such as ethnicity and language spoken, which may have an impact on the design of the case study evaluation procedures used.

**Date of Referral:** The date on which any party makes a request for a case study evaluation in accordance with a district's procedures established pursuant to Section 226.110 of this Part.

**Day:** A calendar day, unless otherwise indicated.

**Business Day:** Monday through Friday, except for federal and State holidays (unless holidays are specifically included in a computation of business days, as at 34 CFR 300.403(d)(1)(i)).

**School Day:** A day on which students are in attendance for instructional purposes during the regularly established school year.

**Disability:** Any of the following specific conditions.

**Autism:** A developmental disability significantly affecting verbal and nonverbal communication and social interactions, generally evident before age three. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routine, and unusual responses to sensory experiences. The term does not apply to a behavior disorder or emotional disturbance.

**Deaf-Blindness:** Concomitant hearing and visual impairments.

**Deafness:** A hearing impairment that is so severe as to impede the processing of linguistic information through hearing, with or without amplification.

**Developmental Delay:** Delay in physical development, cognitive development, communication development, social and emotional development, and/or adaptive development occurring in children from three through five years of age.

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**Emotional/Behavioral Disturbance:** A condition, including schizophrenia, exhibiting one or more of the following characteristics over an extended period of time and to a marked degree:

An inability to learn which cannot be explained by intellectual, sensory, health, cultural, or linguistic factors;

An inability to develop or maintain satisfactory interpersonal relationships with peers and adults;

Inappropriate types of behavior or feelings under normal circumstances;

A general, pervasive mood of anxiety, unhappiness, or depression; or

A tendency to develop physical symptoms or fears associated with personal or school problems.

**Hearing Impairment:** An impairment in hearing, whether permanent or fluctuating, that is not severe enough to constitute deafness.

**Mental Impairment:** Significantly subaverage general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period (may be mild/moderate, severe, or profound).

**Multiple Disabilities:** Concomitant impairments such as mental retardation and blindness or mental retardation and orthopedic impairment, but not including deaf-blindness.

**Orthopedic Impairment:** A physical impairment caused by congenital anomaly (e.g., clubfoot, absence of some member), by disease (e.g., poliomyelitis, bone tuberculosis), or by another condition or event (e.g., cerebral palsy, amputations, or fractures or burns that cause contractures).

**Other Health Impairment:** Limited strength, vitality or alertness (including heightened sensitivity to environmental stimuli that results in limited alertness in the educational environment), due to chronic or acute health problems, such as attention deficit disorders or attention deficit hyperactivity, heart condition, tuberculosis, rheumatic fever, nephritis, asthma, sickle cell anemia, hemophilia, epilepsy, lead poisoning, leukemia, or diabetes.

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**Specific Learning Disability:** A disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations, including such conditions as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. (The term does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, of mental retardation, of emotional disturbance, or of environmental, cultural, or economic disadvantage.) [105 ILCS 5/14-1.03(a)]

**Speech or Language Impairment:** A communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment.

**Traumatic Brain Injury:** An acquired injury to the brain. A traumatic brain injury is one that is caused by an external physical force and occurs after the perinatal period; it is not medically degenerative or congenital; and it results in total or partial functional disability or psychosocial impairment in one or more of the following areas:

cognitive functioning (attention, concentration, intelligence, memory, problem-solving, abstract reasoning, judgment, and information-processing);

communication (receptive and expressive language and speech);

social/emotional functioning (relationships, self-esteem, self-control, age-appropriate behavior);

sensory/perceptual functioning (visual, auditory, kinesthetic, tactile, visual-motor integration);

motor skills (balance, equilibrium, fine and gross motor skills, spatial orientation, speech, speed and coordination of movement, strength);

adaptive behavior (daily living skills, socialization, coping skills).

**Visual Impairment:** An impairment in vision; partial sight or blindness.

**Domain:** An aspect of a child's functioning or performance that must be considered in the course of a case study evaluation. The domains

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are health, vision, hearing, social and emotional status, general intelligence, academic performance, communication status, and motor abilities.

**Educational Performance:** A student's academic achievement and ability to establish and maintain social relationships and to experience a sound emotional development in the school environment.

**Eligible:** Identified in accordance with this Part as having any of the disabilities defined in this Section, when the adverse effect of the disability or disabilities is so severe as to require the provision of special education and related services in order for the child to benefit from his or her education.

**Equipment** (a programmatic definition, not intended to coincide with the definition of "equipment" given in the Program Accounting Manual at 23 Ill. Adm. Code 110.120):

Machinery, utilities, and built-in equipment and any necessary enclosures or structures to house the machinery, utilities, or equipment; and

All other items necessary for the functioning of a particular facility as a facility for the provision of educational services, including items such as instructional equipment and necessary furniture; printed, published and audio-visual instructional materials; telecommunications, sensory, and other technological aids and devices; and books, periodicals, documents, and other related materials.

**Functional Behavioral Assessment:** An assessment process for gathering information regarding the target behavior, its antecedents and consequences, controlling variables, the student's strengths, and the communicative and functional intent of the behavior, for use in developing behavioral interventions.

**General Curriculum:** The curriculum adopted and/or used by a local school district or by the schools within a district for nondisabled students; the content of the program, as opposed to the setting in which it is offered.

**Independent Educational Evaluation:** An evaluation conducted by a qualified examiner who is not employed by the school district responsible for the education of the child in question. (See Section 226.180 of this Part.)

**Individual Family Service Plan (IFSP):** A written plan for providing the early intervention services determined to be appropriate for a

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child and his/her family. (See 20 USC 1436(d).)

Individualized Education Program (IEP): A written statement of the special education and related services that are required in order for a child to benefit from his or her education.

Interim Plan: A portion of an IEP that identifies the services that will be provided as a temporary measure, either when the child's complete IEP cannot be implemented or when the parents and the district have only agreed to a portion of the services that will be needed, and that sets out the specific conditions and timelines to which both the parents and the district have agreed.

Language Use Pattern: The language usage that is most comfortable for an individual in the home or the learning environment. For individuals with deafness or blindness, and for individuals with no written language, "language" means the mode of communication normally used, such as sign language, braille, or oral communication.

Least Restrictive Environment (LRE): The setting that permits a child to be educated with nondisabled children to the maximum extent appropriate. (See Section 226.240(c) of this Part.)

Parent: A parent, a guardian, a person acting in the place of a parent of a child (such as a grandparent or stepparent with whom a child lives), a person who is legally responsible for a child's welfare, or a surrogate parent who has been appointed in accordance with Section 226.550 of this Part. A foster parent is a "parent" when the natural parent's authority to make educational decisions on the child's behalf has been extinguished under State law and the foster parent has an ongoing, long-term parental relationship with the child, is willing to make the educational decisions required of parents under IDHA, and has no interest that would conflict with the interests of the child. The State is not considered the parent of a child who is a ward of the State.

Participating Agency: A state or local agency, other than the local school district, that is or may be legally responsible for providing or funding services to a student who is eligible under this Part.

Personally Identifiable Information: Information that includes the name of the child, the child's parent, or other family member; the child's address; a unique identifier such as the child's Social Security number or student number; or a list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.

Qualified Personnel: Staff members or other individuals who hold the

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certificate, license, registration, or credential that is required for the performance of a particular task.

Qualified Bilingual Specialist: An individual who holds the qualifications described in Section 226.800(f) of this Part.

Qualified Specialist: An individual who holds the applicable qualifications described in Subpart I of this Part.

Referral: A formal procedure established by a school district which involves a request for a case study evaluation.

Related Services: The developmental, corrective, and other supportive services that are provided pursuant to a child's IEP because they are required to assist the child in benefiting from special education. (See Section 226.310 of this Part.) Related services do not include those performed by licensed physicians or dentists (except for diagnostic or evaluative services or consultation to staff), registered or licensed practical nurses (except when functioning as school nurses), or other medical personnel involved in the provision of ongoing medical care.

Special Education: Instruction and related services specially designed to meet the unique needs of an eligible child and provided in an appropriately tailored location.

Special School: An educational setting which is established by the local school district exclusively to meet the needs of eligible children.

Student Record: Any writing or other recorded information concerning a student and by which a student may be individually identified, maintained by a school or at its direction or by an employee of a school, regardless of how or where the information is stored. [105 ILCS 10/2(g)]

Student Permanent Record: The minimum personal information necessary to a school in the education of the student and contained in a school student record. Such information may include the student's name, birth date, address, grades and grade level, parents' names and addresses, attendance records, and such other entries as the State Board may require or authorize. [105 ILCS 10/2(e)]

Student Temporary Record: All information contained in a school student record but not contained in the student permanent record. [105 ILCS 10/2(f)] (See 23 Ill. Adm. Code 375.10.)



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**Supplementary Aids and Services:** Aids, services, and other supports that are provided in the context of regular education programs and services to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate.

**Transition Services:** The development and implementation, based on an individual student's needs, preferences, and interests, of goals for individual, postsecondary education, and/or community living; and the identification of the services that will be provided to assist the student in achieving those goals, such as instruction, related services, community-based experiences, acquisition of daily living skills, functional vocational evaluation, and linkages to supports or services available after graduation.

## SUBPART B: IDENTIFICATION OF ELIGIBLE CHILDREN

## Section 226.100 Child Find Responsibility

- a) Each school district shall be responsible for actively seeking out and identifying all children from birth to age 21 within the district, including children not enrolled in the public schools, who may be eligible for special education and related services. Procedures developed to fulfill this responsibility shall include:
  - 1) An annual screening of children under the age of five for the purpose of identifying those who may need early intervention or special education and related services.
  - 2) Ongoing review of each child's performance and progress by teachers and other professional personnel, in order to refer those children who exhibit problems which interfere with their educational progress and/or their adjustment to the educational setting, suggesting that they may be eligible for special education and related services.
  - 3) Ongoing coordination with early intervention programs to identify children from birth through two years of age who have or are suspected of having disabilities, in order to ensure provision of services in accordance with applicable timelines.
- a) Each local school district shall participate in transition planning conferences arranged by the designated lead agency under 20 USC 1437(a)(8) in order to develop a transition plan enabling the public school to implement an IFSP or IEP no later than the third birthday of each eligible child.
- B) A child is considered "referred" to a school district when he or she is identified by staff of an early intervention program pursuant to 34 CFR 301. Such a referral is effective no later than 60 school days prior to the child's third birthday, regardless of the date on which the notification takes place.
- 4) Coordination and consultation with nonpublic schools located

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- b) Within the district that results in child find activities comparable to those affecting students in the public schools. When the responsible school district staff member(s) conclude that an individual evaluation of a particular child is warranted based on factors such as a child's educational progress, interaction with others, or other functioning in the school environment, the requirements for referral and evaluation set forth in this Subpart B shall apply.

## Section 226.110 Referral

When there is reason to believe that a child may have a disability requiring special education and related services, the child shall be referred for a special education case study evaluation.

## a) Referral Procedures

Each school district shall develop and make known to all concerned persons procedures by which a case study evaluation may be requested. These procedures shall:

- 1) Designate the steps to be taken in making a referral;
- 2) Designate the person(s) to whom a referral may be made;
- 3) Identify the information which must be provided;
- 4) Provide any assistance that may be necessary to enable persons making referrals to meet any related requirements established by the district;
- 5) Identify the process for providing the parents or persons having primary care and custody of a child with notice of their rights with respect to procedural safeguards.
- b) A referral may be made by any concerned person, including but not limited to school district personnel, the parent(s) of a child, an employee of a community service agency, another professional having knowledge of a child's problems, a child, or an employee of the State Board of Education.
- c) District Response to Referral
  - 1) The school district shall be responsible for processing the referral, deciding what action should be taken, and initiating the necessary procedures.
  - 2) To determine whether the referred child requires a case study evaluation, the district may utilize screening data and conduct preliminary procedures such as observation of the child, assessment for instructional purposes, consultation with the teacher or other referring agent, and a conference with the child.
  - 3) The district shall determine whether or not to conduct a case study evaluation and notify the referring party and the parent of the decision and the basis on which it was reached.
  - d) If the district decides to conduct an evaluation, parental consent must be obtained.
    - 1) Pursuant to Section 14-8.02 of the School Code [105 ILCS

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5/14-8,02), the case study evaluation and IEP meeting shall be completed within 60 school days after the date of referral or the date of the parent's application for admittance of the child to the public school.

2) The IEP meeting shall be conducted within 30 school days after the child is determined eligible. The overall limit specified in subsection (d)(1) of this Section still applies.

3) When a child is referred for evaluation with fewer than 60 days of pupil attendance left in the school year, the eligibility determination shall be made and, if the child is eligible, an IEP shall be in effect prior to the first day of the next school year.

e) If the parent refuses consent for initial evaluation, the district may continue to pursue the evaluation by using the mediation or due process procedures described in Section 226-560 and Subpart G of this Part.

f) If the district decides not to conduct an evaluation:

1) The referring party shall be provided written notice of the district's decision not to conduct an evaluation and, subject to the requirements of the Illinois School Student Records Act [105 ILCS 10] and 23 Ill. Adm. Code 375 (Student Records), the reasons for that decision; and

2) The parent shall be provided written notice of:

A) The date of the referral and the reasons for which the case study evaluation was requested; and  
B) The reasons for which the district decided not to conduct a case study evaluation.

g) If a district refuses or fails to conduct an evaluation, the parent of the child in question (or the student, if Section 226.690 of this Part applies) may appeal such refusal or failure in an impartial due process hearing.

#### Section 226.120 Child Review Team - Composition and Responsibilities

Each school district shall ensure that a full and individual evaluation is conducted for each child being considered for special education and related services. An evaluation shall cover all domains (see Section 226.75 of this Part) that are relevant to the individual child under consideration. The Child Review Team shall determine the specific assessments needed to evaluate the individual needs of the child.

a) The Child Review Team that identifies the assessments and procedures needed must have the knowledge and skills necessary to interpret the resulting evaluation data and make an informed determination as to whether the child needs special education and related services. The composition of the team will vary depending upon the nature of the child's suspected disability and other relevant factors. As part of an initial evaluation and as part of any reevaluation conducted under Part B of the Individuals with Disabilities Education Act, the Child

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Review Team shall include the following participants:

1) The IEP team identified in Section 226.210 of this Part, including the parents as equal participants; and  
2) Any other qualified professionals whose expertise is necessary to interpret the evaluation data and make an informed determination as to whether the child needs special education and related services.

b) The Child Review Team shall review and evaluate existing information about the child, including:

1) Information from a variety of formal and informal sources, including information provided by the child's parents;  
2) Current classroom-based assessments and observations;  
3) Observations by teachers and providers of related services;  
4) Information provided by the child; and  
5) Information from specialized evaluations such as those performed by independent evaluators, medical evaluators, behavioral intervention specialists, bilingual specialists, etc.

c) The team shall determine what additional evaluation data are needed in each of the relevant domains, and from what sources that information should be obtained, in order for the team to determine:

1) Whether the child has, or continues to have, one or more of the disabilities defined in Section 226.75 of this Part;  
2) The present levels of performance and educational needs of the child;

3) Whether the disability is adversely affecting the child's education;

4) Whether the child needs (or continues to need) special education and related services; and

5) Whether any additions or modifications to the child's special education and related services are needed to enable the child to meet the goals set out in his or her IEP and to participate appropriately in the general curriculum.

d) If the Child Review Team identifies the need for additional evaluations, the school district shall administer or arrange for such tests and other evaluation procedures as may be needed to produce the needed information.

e) If the Child Review Team determines that no additional information is needed, the district shall provide written notice to the child's parents of:

1) the determination and the reasons for it; and  
2) the parents' right to request an assessment to determine whether the child is or continues to be eligible for special education and related services.

f) If the district does not wish to conduct an assessment requested by a parent, the district shall request a due process hearing.

g) The Child Review Team shall document its evaluation decisions, the basis for the determination made in each domain, and its decisions under subsections (c) and (e) of this Section. This information shall

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be provided to the parents in the form of a written notice in accordance with Section 226.520 of this Part.

**Section 226.130 Evaluation Requirements**

Each local school district shall establish written procedures to ensure that the following requirements are met.

- a) Tests and other materials used to evaluate a child:
  - 1) Shall be selected and administered so as not to be discriminatory on a racial or cultural basis;
  - 2) Shall be provided and administered in the child's native language or other mode of communication, unless it is clearly not feasible to do so;
  - 3) Shall be technically sound and designed to assess the relative contributions of cognitive, behavioral, physical, and developmental factors; and
  - 4) Shall be used in a manner consistent with the instructions provided by their publishers.
- b) A variety of assessment tools and strategies shall be used by qualified specialists who are trained and knowledgeable and shall be used to gather relevant functional and developmental information about the child. The assessment shall include information provided by the parent that may assist in determining:
  - 1) Whether the child is eligible for special education and related services; and, if so,
  - 2) The content of the child's IEP or IFSP, including information related to enabling the child to be involved in and progress in the general curriculum or, if in preschool, to participate in appropriate activities.
- c) When a student is suspected of having a learning disability, an observation shall be conducted in accordance with Section 226.170 of this Part.

- d) Any standardized test that is administered shall:
  - 1) Have been validated for the specific purpose for which it is used; and
  - 2) Be administered by trained and knowledgeable personnel in accordance with any instructions provided by the producer of the test.
- e) Tests and other evaluation materials shall be tailored to assess specific areas of educational need and may not be merely those that are designed to provide a single general intelligence quotient.
- f) Tests shall be selected and administered so as to ensure that, if they are administered to a child with impaired sensory, motor or communication skills, the results of each test accurately reflect the factors that test purports to measure.

- g) No single procedure shall be used as the sole criterion for determining whether a child is eligible pursuant to this Part or for identifying an appropriate educational program for a child.

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- b) The school district shall use assessment tools and strategies that provide relevant information and are sufficiently comprehensive to assist in identifying all of the child's needs for special education and related services, whether or not commonly linked to the disability according to which the child has been classified.
- i) If an assessment is conducted under nonstandard conditions, a description of the extent to which the assessment varied from standard conditions shall be included in the evaluation report. This information is needed so that the team of evaluators can assess the effects of these variances on the validity and reliability of the information reported and determine whether additional assessments are needed. For example, the use of a translator when a qualified bilingual professional is not available may create nonstandard conditions.
- j) If any needed portion of a case study evaluation cannot be completed due to lack of parental involvement, religious convictions of the family, or inability of the child to participate in an evaluative procedure, the district shall note the missing portion(s) in the child's evaluation report and state the reason(s) why such portion(s) could not be completed.
- k) Each individual conducting a portion of a child's evaluation shall be qualified in accordance with Section 226.840 of this Part.

**Section 226.140 Mode(s) of Communication and Cultural Identification**

Before a child is given a case study evaluation, the local school district shall determine the child's language use pattern, general cultural identification, and mode of communication.

- a) Determination of the child's language use pattern and general cultural identification shall be made by determining the language(s) spoken in the child's home and the language(s) used most comfortably and frequently by the child.
- b) If the child has a non-English-speaking background, a determination shall be made of his or her proficiency in English. Such a determination shall be conducted in accordance with the provisions of 23 Ill. Adm. Code 228 (Bilingual Education), which specifies the assessment procedures and eligibility criteria for bilingual education programs (see 23 Ill. Adm. Code 228.15).
- c) Determination of the child's mode of communication shall be made by assessing the extent to which the child uses expressive language and the use he or she makes of other modes of communication (e.g., gestures, signing, unstructured sounds) as a substitute for expressive language.
- d) The child's language use pattern, proficiency in English, mode of communication, and general cultural identification shall be noted in the child's temporary student record, and this information shall be used in the case study evaluation and in the development and implementation of the individualized education program.

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**Section 226.150 Case Study to be Nondiscriminatory**

Each case study evaluation shall be conducted so as to ensure that it is linguistically, culturally, racially, and sexually nondiscriminatory.

- a) The language(s) used to evaluate a child shall be consistent with the child's language use pattern. (See Section 226.140 of this Part.) If the language use pattern involves two or more languages or modes of communication, the child shall be evaluated by qualified specialists or, when needed, qualified bilingual specialists using each of the languages or modes of communication used by the child. The provisions of subsections (b) and (c) of this Section shall apply when a qualified bilingual specialist is needed but unavailable.
- b) If documented efforts to locate and secure the services of a qualified bilingual specialist are unsuccessful, the district shall use an individual who possesses the professional credentials required under Section 226.840 of this Part to complete the specific components of the evaluation. This qualified specialist shall be assisted by a certificated school district employee or other individual who has demonstrated competencies in the language of the child.
- c) If documented efforts to locate and secure the services of a qualified bilingual specialist or a qualified specialist assisted by another individual as provided in subsection (b) of this Section are unsuccessful, the district shall conduct assessment procedures which do not depend upon language. Any special education resulting from such alternative procedures shall be reviewed annually until the child acquires a predominantly English language use pattern.
- d) Tests given to a child whose primary language is other than English shall be relevant, to the maximum extent possible, to his or her culture.
- e) If the child's receptive and/or expressive communication skills are impaired due to hearing and/or language deficits, the district shall utilize test instruments and procedures that do not stress spoken language and one of the following:
  - 1) Visual communication techniques in addition to auditory techniques.
  - 2) An interpreter to assist the evaluative personnel with language and testing.

**Section 226.160 Determination of Eligibility**

Each school district shall develop written eligibility, entrance, and exit criteria which comply with the definitions of the disability categories identified in Section 226.75 of this Part.

- a) Upon completing the administration of tests and any other evaluation procedures, the Child Review Team shall meet to interpret the evaluation data. This shall be done for the purpose of determining whether the child is eligible for special education and related services. In making this determination, the Child Review Team shall:

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- 1) Draw upon information from a variety of sources, including aptitude and achievement tests, parental input, teacher recommendations, physical condition, social or cultural background, and adaptive behavior; and
- 2) Ensure that information obtained from all of these sources is documented and considered.

b) A child may not be determined eligible under this Part if the determinant factor for that determination is lack of instruction in reading or math or limited English proficiency and the child does not otherwise meet the district's eligibility criteria.

- c) At the conclusion of the Child Review Team's meeting, the team shall prepare a report describing its consideration of pre-existing information about the child, all new evaluation reports obtained, and any other information relevant to the decision about the child's eligibility. This description shall relate the information considered to the child's needs and shall further conform to the requirements of Section 226.170(d) of this Part if applicable. The team's report shall also include:
  - 1) the date of the meeting;
  - 2) the signatures of the participants, indicating their presence at the meeting; and
  - 3) any separate written statement provided by a participant who wishes to be on record as disagreeing with the conclusions expressed in the team's report.

- d) The school district shall provide a copy of the Child Review Team's report to the parent at the conclusion of the team's meeting. In addition, the district shall provide to the parent, within ten school days after the meeting, written notice conforming to the requirements of Section 226.520 of this Part as to the eligibility determination reached with respect to the child. The parent shall also be entitled to receive copies of any evaluation reports upon request.

- e) A copy of the Child Review Team's report, together with all documentation upon which it is based, shall become a part of the child's temporary student record.

- f) If a child is determined eligible for special education and related services, an IEP shall be developed in accordance with Subpart C of this Part.

**Section 226.170 Criteria for Determining the Existence of a Specific Learning Disability**

- a) When a child is suspected of having a learning disability, at least one of the evaluators involved pursuant to Section 226.120 of this Part, other than the child's own teacher, shall observe the child's academic performance in a classroom setting. In the case of a child who has not attained school age or is not in school, an evaluator shall observe the child in an environment appropriate for a child of that age.



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b) Except as limited by subsection (c) of this Section, a Child Review Team may determine that a child has a specific learning disability if the team includes an individual qualified to conduct individual diagnostic examinations of children and:

- 1) The child does not achieve commensurate with his or her age and ability levels in one or more of the areas listed in subsection (b)(3) of this Section, if provided with learning experiences appropriate for the child's age and ability levels;
- 2) The child evidences a disorder in one or more of the basic psychological processes involved in understanding or in using language spoken or written, that may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or perform mathematical calculations, including such conditions as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia; and
- 3) The team finds that a child has a severe discrepancy between achievement and intellectual ability in:
  - A) Oral expression;
  - B) Listening comprehension;
  - C) Written expression;
  - D) Basic reading skill;
  - E) Reading comprehension;
  - F) Mathematics calculation; and/or
  - G) Mathematics reasoning.

c) The Child Review Team may not identify a child as having a specific learning disability if the discrepancy between ability and achievement is primarily the result of:

- 1) A visual, hearing, or motor impairment;
- 2) Mental impairment;
- 3) Emotional disturbance; and/or
- 4) Environmental, cultural or economic disadvantage.

d) For a child suspected of having a specific learning disability, the documentation of the Child Review Team's determination of eligibility must include a statement of:

- 1) Whether the child has a specific learning disability;
  - 2) The basis for making the determination;
  - 3) The relevant behavior noted during the observation of the child;
  - 4) The relationship of that behavior to the child's academic functioning;
  - 5) The educationally relevant medical findings, if any;
  - 6) Whether there is a severe discrepancy between achievement and ability that is not correctable without special education and related services; and
  - 7) The team's determination concerning the effects of environmental, cultural, or economic disadvantage.
- e) Each team member shall certify in writing whether the report reflects his or her conclusions. If it does not, the team member shall submit a separate statement presenting his or her conclusions.

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**Section 226.180 Independent Educational Evaluation**

Parents have the right to obtain an independent educational evaluation of their child, subject to the provisions of this Section.

- a) The district shall provide to the parents, upon their request, the list of independent educational evaluators developed by the State Board of Education pursuant to Section 226.830 of this Part.
- b) If the parents disagree with the district's evaluation and wish to obtain an independent educational evaluation at public expense, they shall submit to the local school district superintendent a written request to that effect.
- c) If the district disagrees with the need for an independent educational evaluation, it shall initiate a due process hearing to demonstrate that its evaluation is appropriate. Such a hearing must be initiated by the local school district within ten school days following receipt of a written parental request for an independent educational evaluation.
- d) An independent educational evaluation at public expense must be completed within 30 days after receipt of a parent's written request, unless the school district initiates a due process hearing or the parties agree that the 30-day period should be extended. If either party wishes such an extension and is unable to obtain the other party's agreement, the district shall initiate a due process hearing within ten school days after the date on which the extension was proposed.
- e) If the final decision of the hearing and review process is that the school district's evaluation is appropriate, the parents shall have the right to an independent educational evaluation, but not at public expense.
- f) If the school district's evaluation is shown to be inappropriate, the district shall pay for the independent educational evaluation or reimburse the parents for the cost of the evaluation.
- g) If the parent is entitled to an independent educational evaluation at public expense, it shall be completed within 30 days after the decision is rendered, unless the parties agree that the 30-day period should be extended. If either party wishes such an extension and is unable to obtain the other party's agreement, the school district shall initiate a due process hearing within ten school days after the date on which the extension was proposed.
- h) When an independent evaluation is obtained at public expense, the party chosen to perform the evaluation shall be either:
  - 1) an individual whose name is included on the list provided by the State Board of Education with regard to the relevant type(s) of evaluation; or
  - 2) another individual possessing the credentials required by Section 226.840 of this Part.
- i) If the parent wishes an evaluator to have specific credentials in addition to those required by Section 226.840 of this Part, the

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parent(s) and the school district shall agree on the qualifications of the examiner and the specific evaluation(s) to be completed prior to the initiation of an independent educational evaluation at public expense. If agreement cannot be reached, the school district shall initiate a due process hearing subject to the time constraints set forth in this Section, as applicable.

j) The conditions under which an independent evaluation is obtained at public expense, including the location of the evaluation and the public agency uses when it initiates an evaluation, to the extent that those criteria are consistent with the parent's right to an independent evaluation. Although the district may ask the parent to specify the areas of disagreement with the local school district's evaluation, the district may not impose any additional conditions or timelines related to obtaining an independent educational evaluation at public expense (such as requiring the parent to specify the areas of disagreement).

k) If the parent obtains an independent educational evaluation, the written result of that evaluation shall be considered by the Child Review Team. The district shall send the notice convening the Child Review Team's meeting within five school days after receiving the evaluation report or after the parent requests a meeting to consider the results of an independent evaluation.

l) The district shall consider the results in any decision made with respect to the provision of a free appropriate public education to the child.

2) The independent evaluation results may be presented as evidence at a hearing or review regarding the child pursuant to this Part.

**Section 226.190 Reevaluation**

a) A local school district shall reevaluate an eligible child whenever conditions warrant a reevaluation or the child's parent or teacher requests a reevaluation, but at least once every three years. Reevaluations are subject to the applicable requirements of Sections 226.110 through 226.180 of this Part.

b) A district shall reevaluate an eligible child before determining that the child is no longer eligible pursuant to this Part.

c) A reevaluation is not required for a student who graduates from high school with a regular high school diploma or its equivalent or attains the age of 21. (See Section 226.50(k)(4) of this Part.)

**SUBPART C: THE INDIVIDUALIZED EDUCATION PROGRAM (IEP)****Section 226.200 General Requirements**

a) An IEP shall be in effect before special education and related services are provided to the child in question.

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b) Any activity undertaken with respect to a child's IEP (such as developing or revising the goals, benchmarks, short-term objectives, services, or placements) shall be conducted by an IEP Team that conforms to the requirements of Section 226.210 of this Part.

c) Each school district shall have an IEP in effect for each eligible child within its jurisdiction at the beginning of each school year.

1) When an IEP is developed or revised, notice to the parents shall be provided immediately in accordance with Section 226.520 of this Part, and implementation of the IEP shall occur no later than ten days after the provision of such notice.

2) A school district shall provide special education and related services to eligible children in accordance with their IEPs. The district and teachers shall make efforts in good faith to assist children in achieving the goals and objectives or benchmarks listed in their IEPs. However, an IEP does not constitute a guarantee by a school district or teachers that a child will progress at a specified rate.

3) If a participating agency other than the local school district fails to provide transition services required by an IEP, the school district shall convene an IEP meeting to identify alternative strategies for meeting the applicable transition objectives established in the child's IEP.

d) A child's IEP shall be reviewed at least annually to determine whether the goals for the child are being achieved.

e) Either a child's teacher or a child's parent may request the review of the child's IEP at any time. Within ten days after receiving such a request, the district shall either agree and notify the parent in accordance with Section 226.530(b) of this Part or notify the parents in writing of its refusal, including an explanation of the reason no meeting is necessary to ensure the provision of PAPs for the child.

f) A child's IEP shall be revised if necessary to address:

- 1) any lack of expected progress related to the annual goals or the general curriculum, if appropriate;
- 2) the child's anticipated needs;
- 3) information about the child provided to or by the parents; or
- 4) any other relevant matters.

g) Each district shall have procedures in place for providing to involved staff members the information they need about the results of a child's IEP meeting, including any responsibilities they will have for implementation of the IEP.

**Section 226.210 IEP Team**

The composition of the IEP Team for a particular child, and the participation of the team members and other individuals in the IEP meeting, shall conform to the requirements of this Section. Nothing in this Section shall be construed as requiring the attendance of any member of an IEP Team for the entire duration of a meeting.

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- a) The child's parents shall be members of the IEP Team and shall be entitled to function as equal participants in the IEP meeting.
- b) The IEP Team shall include at least one regular education teacher if the child is participating or may participate in the regular education environment.
  - 1) This should be the teacher who is or may be responsible for implementing a portion of the IEP, so that the teacher can participate in discussions about how best to teach the child. The responsibilities of this teacher shall include assisting in:
    - A) the determination of appropriate positive behavioral interventions and strategies for the child; and
    - B) the identification of supplementary aids and services, program modifications, and supports for school personnel, consistent with 34 CFR 300.337(a)(3).
  - 2) If the child does not have a regular teacher but is anticipated to receive at least some instruction in the regular education setting, the team shall include a regular classroom teacher qualified to teach children of that age.
  - 3) For a child of less than school age, the team shall include an individual qualified to teach preschool children.
- c) The team shall include at least one special education teacher. If known, this shall be the person who is or will be responsible for implementing a portion of the child's IEP. If the child is receiving only speech and language services, the speech and language pathologist shall fulfill this role.
- d) If the child has more than one regular or special education teacher, the local school district may designate which teacher(s) will participate. Each district shall have procedures in place to permit any involved staff members who do not participate in the IEP meeting to provide their input for consideration.
- e) The IEP Team shall include a representative of the local school district who:
  - 1) Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities;
  - 2) Is knowledgeable about the general curriculum;
  - 3) Is knowledgeable about the district's resources; and
  - 4) Has the authority to make commitments for the provision of services.
- f) The IEP Team shall include a qualified bilingual specialist or bilingual teacher, if the presence of such a person is needed to assist the other participants in understanding the child's language and cultural factors as they relate to the child's instructional needs.
- g) In the case of a child whose behavior impedes his or her learning or the learning of others, the team shall include a person knowledgeable about positive behavior strategies, who may be one of the individuals enumerated in subsections (b) through (f) and (h) of this Section.

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- h) The IEP Team shall include an individual who is qualified to interpret the instructional implications of the evaluation results, who may be one of the individuals enumerated in subsections (b) through (g) of this Section.
  - 1) In the case of a student for whom transition services must be planned, the district shall invite a representative of any other agency that is likely to be responsible for providing or paying for transition services. If a public agency invited to send a representative to a meeting does not do so, the district shall document other steps taken to obtain participation of that agency in the planning of any transition services.
  - j) Participation of Student
    - 1) Either the district or the parent may invite the student who is the subject of the IEP meeting to attend.
    - 2) The district shall invite the student when a purpose of the meeting is to plan for transition services needed by the student. The notice to the student shall conform to the requirements of Section 226.520(b)(8) of this Part. If the student does not attend, the district shall take other steps to ensure that the student's preferences and interests are considered and shall keep a record of those steps.
    - 3) The district shall invite the student instead of the parent when Section 226.690 of this Part applies. The student's absence from the IEP meeting shall be subject to the provisions for parental participation set forth in Section 226.530 of this Part.
  - k) At the discretion of the parent (or the student, if applicable) or the district, the IEP Team shall include other individuals with knowledge or special expertise regarding the child, including providers of related services.

## Section 226.220 Factors in Development of the IEP

In developing a child's IEP, the IEP Team shall consider the strengths of the child and the concerns of the parents for enhancing the child's education, as well as the results of the most recent valid evaluation and any available assessment information that may be useful. If the IEP Team determines that one or more of the factors described in this Section could impede learning or that the child needs a particular device or service (including an intervention, accommodation, behavioral intervention or strategy, or other program modification or support for school personnel) in order for the child to receive FAPE, these needs shall be documented in the IEP in terms of goals, services, and/or providers' responsibilities (see Section 226.230(a) of this Part).

- a) The team shall consider whether the child requires assistive technology devices and services.
- b) The team shall consider whether the child has any special needs related to communication.
- c) In the case of a child of limited English proficiency, the team shall consider the language-related needs of the child.

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- d) In the case of a child who is deaf or hard of hearing, the team shall consider the child's language and communication needs, opportunities for direct communication with peers and professional personnel in the child's language and mode of communication, academic level, and full range of needs, including opportunities for direct instruction in the child's language and mode of communication.
- e) In the case of a child whose behavior impedes his or her learning or the learning of others, the team shall consider the need for a functional behavioral assessment in order to determine whether behavioral intervention strategies are necessary.
- f) In the case of a child who is visually impaired, the team shall consider whether instruction in Braille and/or the use of Braille will be necessary. To omit or discontinue Braille instruction or use requires an evaluation of the child's reading and writing skills and a determination by the IEP Team that Braille is not appropriate.

**Section 226-230 Content of the IEP**

Nothing in this Section shall be construed to require the inclusion of information in one section of a child's IEP that is already contained in another section.

- a) Each IEP shall include all the components enumerated in this subsection (a).
- 1) A statement of the child's present levels of educational performance, including:
    - A) How the child's disability affects the child's involvement and progress in the general curriculum; or
    - B) For a preschool child, how the disability affects the child's participation in appropriate activities.
  - 2) A statement of measurable annual goals that reflect consideration of the State Goals for Learning and the Illinois Learning Standards (see 23 Ill. Adm. Code 1), as well as benchmarks or short-term objectives developed in accordance with the child's present levels of educational performance, related to:
    - A) Meeting the child's needs that result from the child's disability, to enable the child to be involved in and progress in the general curriculum or, for preschool children, to participate in activities appropriate to the child's age; and
    - B) Meeting each of the child's other educational needs that result from the child's disability.
  - 3) A description of how the child's progress toward his or her annual goals will be measured and of how the parent(s) will be informed of the child's progress. This description shall include a statement of the child's ability to participate in assessments and what accommodations are necessary, if any. If the child is unable to participate even with accommodations, a description of

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the alternative assessment(s) to be used shall also be provided.

A) Parents of children with disabilities shall be informed of their children's progress at least as often as parents of children without disabilities are informed of their children's progress.

- B) The information provided to the parents of a child served pursuant to this part shall include a description of the child's progress toward his or her annual goals and an indication of the extent to which that progress is sufficient to enable the child to achieve those goals by the time the current IEP will require annual review. This information shall be provided in addition to, rather than in place of, the information provided to the parents of all children in the district regarding their children's progress in regular education subjects or curricular areas.
- 4) A statement of the child's ability to participate in State and district-wide assessments.
- A) This statement must describe any individual accommodations that are needed in order for the child to participate in a given assessment.
- B) If the IEP Team determines that the child will not participate in a particular assessment of student achievement (or part of an assessment), a statement as to:
- i) Why that assessment is not appropriate for the child; and
  - ii) How the child's performance will be assessed, including a description of the alternate assessments to be used.
- 5) A statement as to the language(s) or mode(s) of communication in which special education and related services will be provided, if other than or in addition to English.
- 6) An explanation of any limitations on the degree to which the child will participate with nondisabled children in regular education and in extracurricular and other nonacademic activities.
- 7) A statement of the special education and related services and supplementary aids and services to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided in order for the child:
- A) To advance appropriately toward attaining the annual goals;
  - B) To be involved and progress in the general curriculum and to participate in extracurricular and other nonacademic activities.
- 8) The projected beginning date for the services and modifications described in subsection (a)(7) of this Section; the amount, frequency, location, duration of each of the services and modifications; and the implementor(s) of each.



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- 9) A statement as to whether the child requires the provision of services beyond the district's normal school year in order to receive FAPE ("extended school year services").
- 10) The placement that the team has determined to be appropriate for the child.
- 11) Any additional information deemed necessary or pertinent by the IEP Team.
- b) The IEP of a student who requires a behavioral intervention plan shall:
  - 1) Summarize the findings of the functional behavioral assessment;
  - 2) Summarize prior intervention(s) implemented;
  - 3) Describe any behavioral intervention(s) to be used, including those aimed at developing or strengthening alternative or more appropriate behaviors;
  - 4) Identify the measurable behavioral changes expected and method(s) of evaluation;
  - 5) Identify a schedule for a review of the intervention's effectiveness; and
  - 6) Identify provisions for communicating with the parents about their child's behavior and coordinating school-based and home-based interventions.
- c) The IEP for a student who has reached the age of 14 shall also include a description of the student's transition service needs under the applicable components of the IEP, with specific reference to the student's courses of study.
- d) The IEP for a student who has reached the age of 14 1/2 shall include goals for employment, postsecondary education, or community living alternatives and a description of transition supports or services, based on the student's needs, including identification of the agency responsible for delivering any needed support or service and, as applicable, any interagency responsibilities or needed linkages.
- e) The IEP for a student who has reached the age of 17 shall include documentation indicating that the student has been informed of the rights under the Individuals with Disabilities Education Act that will transfer to the student when he or she reaches the age of 18.
- f) The IEP of a student who may, after reaching age 18, become eligible to participate in the home-based support services program for mentally disabled adults authorized by the Developmental Disability and Mental Disability Services Act [405 ILCS 80] shall set forth specific plans related to that program that conform to the requirements of Section 14-8.02 of the School Code.
- g) Students Incarcerated as Adults
  - 1) The IEP of a student incarcerated as an adult is not required to comply with:
    - A) The requirements of subsection (a)(4) of this Section regarding assessment; and
    - B) The requirements of subsections (c) and (d) of this Section regarding planning for the transition to adult life and

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services to assist with that transition, if the student's eligibility for special education will end before he or she will be eligible to be released from prison.

- 2) The IEP Team may modify a student's IEP or placement if the State has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated. The requirements of Section 226.240(c) of this Part regarding placement in the least restrictive environment shall not apply in these circumstances.

## Section 226.240 Determination of Placement

- a) The placement determination shall be made by the IEP Team.
- b) The placement determination shall be consistent with the child's IEP.
- c) The placement determination shall provide the least restrictive environment for the child
  - 1) To the maximum extent appropriate, each child, including children in public or nonpublic residential facilities, shall be educated with children who are nondisabled.
  - 2) Special education classes, separate schooling, or other removal of children with disabilities from the regular education environment shall occur only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.
  - 3) Each child's placement shall be as close as possible to his or her home.
  - 4) Unless the IEP requires some other arrangement, a child shall be educated in the school he or she would attend if not disabled.
  - 5) Consideration shall be given to the possible harmful effect of a placement on the child or on the quality of services received.
  - 6) A child shall not be removed from a classroom solely because of needed modifications in the general curriculum.
  - d) The placement decision shall permit the child to participate as appropriate in nonacademic and extracurricular services and activities (e.g. meals, recess, recreational activities, and clubs sponsored by the district).
  - e) The placement determination shall be reviewed at least annually or any time the IEP is revised.

## Section 226.250 Child Aged Three Through Five

In the case of an eligible child three through five years of age, an IFSP that contains the material described in 20 USC 1436 may serve as a child's IEP if using that plan is agreed to by the local school district and the child's parents. If a district proposes to use an IFSP, the local school district shall:

- a) Provide a detailed explanation of the differences between an IFSP and

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- an IEP to the child's parents; and
- b) Obtain informed, written consent from the parents for the use of the IEP.

**Section 226.260 Child Reaching Age Three**

- a) Child with an IEP  
For each child who will be making the transition from an early intervention program into the special education program of a school district at age three, the district shall ensure that either an IEP or the child's IESP is in effect on his or her third birthday. A representative of the school district shall participate in the transition meeting scheduled by the early intervention team.
- b) Child without an IEP  
1) For each child who is referred to a school district at least 60 school days prior to his or her third birthday and determined eligible, the district shall ensure that either an IEP or an IESP is in effect on his or her third birthday.
- 2) For each child who is referred with fewer than 60 school days remaining before his or her third birthday, or after that date, and determined to be eligible, the district shall comply with the requirements of Section 226.110(c) and (d) of this Part.
- c) If a child's third birthday occurs during the summer, the IEP Team for that child shall determine when the district's services to the child will begin.

## SUBPART D: PLACEMENT

**Section 226.300 Continuum of Placement Options**

Each local school district shall ensure that a continuum of placements is available to meet the needs of children with disabilities for special education and related services. The continuum shall include at least the following.

- a) Regular Classes  
The child receives his or her basic educational experience through instruction in regular classes. However, these experiences are supplemented through:
- 1) Additional or specialized instruction from the teacher;
  - 2) Consultation to and with the teacher by providers of special education and related services;
  - 3) Provision of special equipment, materials, and accommodations;
  - 4) Modification in the instructional services (e.g., multi-age placement, expectations, grading, etc.);
  - 5) Modification of curricular content or educational methodology; or
  - 6) Other supplementary services, such as itinerant services or services in a resource room, in conjunction with the regular class placement.
- b) Special Classes

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The child receives specially designed instruction through a special education class. The child is included in those parts of regular classes which are appropriate.

- c) Special Schools  
The child receives specially designed instruction in a special school. The child is included in those parts of regular classes which are appropriate.
- d) Home/Hospital Services  
The child receives services at home or in a hospital or other setting because he or she is unable to attend school elsewhere due to a medical condition.
- 1) When an eligible student has a medical condition that will cause an absence for two or more consecutive weeks of school or ongoing intermittent absences, the IEP Team for that child shall consider the need for home or hospital services. Such consideration shall be based upon a written statement from a physician licensed to practice medicine in all its branches which specifies:
    - A) the child's condition;
    - B) the impact on the child's ability to participate in education (the child's physical and mental health level of tolerance for receiving educational services); and
    - C) the anticipated duration or nature of the child's absence from school.
  - 2) If an IEP Team determines that home or hospital services are medically necessary, the team shall develop or revise the child's IEP accordingly.
  - 3) The amount of instructional or related service time provided through the home or hospital program shall be determined in relation to the child's educational needs and physical and mental health needs. The amount of instructional time shall not be less than five hours per week unless the physician has certified in writing that the child should not receive as many as five hours of instruction in a school week.
  - 4) A child whose home or hospital instruction is being provided via telephone or other technological device shall receive not less than two hours per week of direct instructional services.
  - 5) Instructional time shall be scheduled only on days when school is regularly in session, unless otherwise agreed to by all parties.
  - 6) Services required by the IEP shall be implemented as soon as possible after the district receives the physician's statement.
  - e) State-Operated or Nonpublic Programs  
The child is served in a State-operated or nonpublic facility because his or her disabilities are so profound or complex that no services offered by the public schools can meet his or her needs.

**Section 226.310 Related Services**

Related services shall be provided if necessary to assist an eligible child in

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benefiting from his or her special education. The related services that will be provided to a particular child shall be described in the IEP in conformance with the requirements of Section 226.230(a)(7) and (8) of this Part. The most commonly provided related services include assistive technology; audiology; counseling services; early identification and assessment of disabilities; diagnostic medical services; occupational therapy; orientation and mobility services; parent counseling and training; physical therapy; recreation; rehabilitation counseling; school health services; school psychological services; school social work services; special readers; brailists; typists, and interpreters; speech-language pathology services; transition services; transportation; and vocational education.

a) Assistive Technology: Any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device as defined in Section 226.75 of this Part. Examples include:

- 1) The evaluation of the needs of a child with a disability, including a functional evaluation of the child in the child's customary environment;
- 2) Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by children with disabilities;
- 3) Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;
- 4) Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;
- 5) Training or technical assistance for a child with a disability or, if appropriate, that child's family; and
- 6) Training or technical assistance for individuals providing education or rehabilitation services, employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of a student with a disability.

b) Audiology includes such services as:

- 1) Identification of children with hearing loss;
- 2) Determination of the range, nature, and degree of hearing loss, including referral for medical or other professional attention for the habilitation of hearing;
- 3) Provision of habilitative activities such as language habilitation, auditory training, speech reading (lip-reading), hearing evaluation, and speech conservation;
- 4) Creation and administration of programs for the prevention of hearing loss;
- 5) Counseling and guidance for pupils, parents, and teachers regarding hearing loss; and
- 6) Determination of a child's need for group and individual amplification, selecting and fitting an appropriate aid, and

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c) evaluating the effectiveness of amplification.

c) Occupational therapy:

- 1) Improving, developing or restoring functions impaired or lost through illness, injury, or deprivation;
- 2) Improving ability to perform tasks for independent functioning;
- 3) Preventing, through early intervention, initial or further impairment or loss of function.

d) Orientation and Mobility Services: Services provided to a blind, visually impaired, or otherwise disabled child to enable the child to attain systematic orientation to and safe movement within the environments in school, home, and community. Includes teaching a child:

- 1) Spatial and environmental concepts and the use of information received by the senses (such as sound, temperature and vibrations) to establish, maintain, or regain orientation and line of travel (for example, using sound at a traffic light to cross the street);
- 2) The use of the long cane to supplement visual travel skills or as a tool for safely negotiating the environment;
- 3) The use of remaining vision and low vision aids; and
- 4) Other concepts, techniques, and tools deemed appropriate for the child.

e) Parent Counseling and Training: Services to assist parents in understanding the special needs of their child, provide parents with information about child development, and help parents to acquire the skills that will allow them to support the implementation of their child's IEP or IFS.

f) Recreation: Services such as:

- 1) Assessment of leisure function;
- 2) Therapeutic recreation services;
- 3) Recreation programs in schools and community agencies; and
- 4) Leisure education.

g) Rehabilitation Counseling: Services provided in individual or group sessions that focus on career development, preparation for employment, achieving independence, and integration in the workplace and community of a student with a disability.

h) School Health Services include such activities as:

- 1) Preparing a health assessment by conducting interviews with a child's parents and teachers; reviewing the Certificate of Child Health Examination, reviewing the vision and hearing screening results and other pertinent health information, and recommending additional medical evaluations as indicated;
- 2) Interpreting health assessment results;
- 3) Obtaining, integrating, and interpreting pertinent health information about a child as it applies to learning;
- 4) Consulting with other staff members in planning school programs to meet the needs of children who require the provision of special health services at school;

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- 5) Planning and managing a program of school health services to meet the specific needs of all children;
- 6) Identifying and mobilizing community health resources to enable children to learn as effectively as possible in the educational program; and
- 7) Administering medication.

1) School Psychological Services may include such activities as:

- 1) Administering psychological and educational tests and other assessment procedures;

- 2) Interpreting assessment results;
- 3) Obtaining, integrating, and interpreting information about children's behavior and conditions relating to learning;
- 4) Consulting with other staff members in planning school programs to meet the special needs of children as indicated by psychological tests, interviews, and behavioral evaluations;
- 5) Planning, managing, and providing a program of psychological services, including psychological counseling for children and parents;
- 6) Assisting in completing a functional behavioral assessment, as well as assisting in the development of positive behavioral intervention strategies.

3) School Social Work Services may include activities such as:

- 1) Preparing a social developmental study on a child with a disability;

- 2) Group and individual counseling with a child and his or her family;
- 3) Working with parents and others on those problems in a child's living situation (home, school, and community) that affect the child's adjustment in school;
- 4) Mobilizing school and community resources to enable the child to learn as effectively as possible in his or her educational program; and

- 5) Assisting in completing a functional behavioral assessment, as well as assisting in the development of positive behavioral intervention strategies.
- k) Speech-Language Pathology Services encompass such activities as:

- 1) Screening, diagnosis and appraisal of specific speech and language impairments;
- 2) Identification of children with speech and/or language impairments;
- 3) Referral and follow-up for medical or other professional attention necessary for the habilitation of speech and language impairments;
- 4) Planning and developing interventions and programs for children or youth with speech and language impairments;
- 5) Provision of services for the habilitation and prevention of speech and language impairments; and
- 6) Counseling and guidance of parents, children, and teachers

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- 1) regarding speech and language impairments.
- Transportation: Special transportation services required because of the child's disability or the location of the special education program or related services, and which are in addition to the regular transportation services provided by the local school district.

- 1) Travel to and from school and between schools;
- 2) Travel in and around school buildings;
- 3) Specialized equipment (such as special or adapted buses, lifts, and ramps).

### Section 226.320 Service to Students Living in Residential Care Facilities

Children with disabilities may be placed into public or nonpublic residential facilities for reasons other than education by various public entities such as the Department of Corrections, the Department of Children and Family Services, or the juvenile courts. Except as provided in Section 14-8.01 of the School Code, the school district within whose boundaries such a facility is located is responsible for ensuring special education and related services in the least restrictive environment to those students who are eligible pursuant to this Part. "Residential facilities" refers to any of the following:

- a) "Children's Home" or "Orphanage": any licensed residential institution, other than those directly operated by the State of Illinois, which cares for disabled, neglected, delinquent, and/or dependent children.
- b) "Foster Family Home": an individual residential unit which cares for one or more disabled, neglected, delinquent, or dependent children who are not members of the primary family. Such a home accepts foster children for care under specific and written authority of a municipal, county, or State agency authorized to make such placement.
- c) "State Residential Units": residential housing units which are directly operated by the State of Illinois, on property owned by the State, and primarily funded by an agency of the State.

### Section 226.330 Placement by School District in State-Operated or Nonpublic Special Education Facilities

When an IEP Team determines that no public school's special education program can adequately meet a child's needs, the child may be placed in a State-operated or nonpublic special education facility. In such a case, use of a State-operated program should be given first consideration. However, the district shall refer the child to the agency or facility which is most appropriate to the individual situation. This determination shall be based upon recent diagnostic assessments and other pertinent evidence and made in light of such other factors as proximity to the child's home. Evidence of a condition that presents a danger to the physical well-being of the student or to other students may be taken into consideration in identifying the appropriate placement for a particular child.

- a) When it appears that a child will require a placement pursuant to this



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Section, the IEP Team shall invite representatives of potential service providers to assist in identifying or verifying the appropriate placement for that child. If one or more needed representatives cannot attend, the district shall use other methods to ensure their participation.

- b) The local school district is responsible for ensuring implementation of the child's IEP and convening any needed IEP meetings, including the annual review. If the district allows a State-operated or nonpublic school to initiate and conduct the IEP meeting, the district must ensure that the parent and a representative of the district are invited to participate in any decision about the child's IEP and agree to any proposed changes in the program before the changes are implemented. The district remains responsible for the development and implementation of the child's IEP and for compliance with the requirements of this Part.

- c) No school district shall place any child in a nonpublic special education program, nor shall any such program accept placement of any child with a disability under Section 14-7.02 of the School Code [105 ILCS 5/14-7.02], unless all the following conditions have been met.

- 1) The program has been approved by the State Board of Education for the school year for which placement is sought.
  - 2) The allowable costs for the program have been established pursuant to Section 14-7.02 of the School Code.
  - 3) The district has made the certification of inability to meet the student's needs to the State Superintendent of Education required pursuant to Section 14-7.02 of the School Code and the State Superintendent has found the district in substantial compliance with Section 14-4.01 of the School Code [105 ILCS 5/14-4.01].
  - 4) The program has been approved by the State Board of Education for all of the disability categories applicable to the student and requiring services pursuant to the IEP.
  - 5) The program has been approved by the State Board of Education for the age range that includes the age of the student.
  - 6) The district has determined that all educational programming and related services specified on the child's IEP will be provided by the facility. The use of a nonpublic facility does not relieve the local school district of the responsibility for ensuring the provision of all programming and related services required by the IEP.
  - 7) The school district and the facility have entered into the contractual agreement required by subsection (d) of this Section.
  - 8) The child will receive an education that meets the standards applicable to education provided by the school district.
- d) If a nonpublic school placement is chosen, the district and the facility shall enter into an agreement utilizing a format provided by the State Board of Education. The agreement shall provide for, but need not be limited to:

- 1) The child's IEP, as developed by the local school district;

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- 2) The amount of tuition that will be charged;
  - 3) Assurance that the special education staff of the placing school district may inspect the private facility and confer with the staff at reasonable times; and
  - 4) Assurances that the placement will result in no cost to parents.
- e) When a nonpublic facility is used, the school district shall be responsible for the payment of tuition and the provision of transportation as provided by Section 14-7.02 of the School Code. (See also Section 226-750(e) of this Part.)
- f) Each local school district shall be responsible for monitoring the performance of each State-operated or nonpublic facility where it has placed one or more eligible students, to ensure that the implementation of each IEP conforms to the applicable requirements of this Part.

**Section 226.340 Nonpublic Placements by Parents**

Except as provided in 34 CFR 300.403, a parent who elects to place a child in a nonpublic school or facility without the consent or referral of the local school district is not entitled to have the district pay for that placement if the district made or attempted to make FAPE available to the child.

- a) Disagreements between a parent and a school district regarding the district's provision of an appropriate program for a particular child shall be resolved by means of the due process afforded pursuant to Subpart G of this Part.

- b) No child who is placed into a nonpublic facility by his or her parent(s) without the consent or referral of the local school district has an individual right to receive the special education and related services that the child would receive if enrolled in the district. Instead, a district's services to such children are subject to the provisions of Section 226.350 of this Part.

**Section 226.350 Service to Children in Private Schools**

- a) To the extent consistent with their number and locations in the State, provision must be made by school districts for services to children with disabilities who have been enrolled in private schools by their parents.

- 1) Each school district shall consult, by the end of each school year, with representatives of private schools in light of the funding available for serving their students, the number of such students, their needs, and their respective locations to decide:
  - A) Which children will receive services;
  - B) What services will be provided;
  - C) How the services will be provided; and
  - D) How the services provided will be evaluated.

- 2) Each school district shall give representatives of private schools a genuine opportunity to express their views regarding

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each matter that is subject to the consultation requirements of this subsection (a).

- 3) The consultation required by this subsection (a) shall occur before the school district makes any decision that affects the opportunities of private school children with disabilities to participate in services.
- 4) The school district shall make the final decisions with respect to the services to be provided to eligible children who are enrolled in private schools.
- 5) The school district shall maintain a written record of actions taken in compliance with the requirements of this subsection (a).
- 6) The services provided by a school district to children with disabilities enrolled in private schools shall be comparable in quality to the services provided to eligible children enrolled in the district. "Comparable in quality" means provided by similarly qualified personnel.
  - 1) Eligible students in private schools may receive a different amount of services than eligible children in public schools.
  - 2) No individual child must receive a specific service or receive the same amount of service the child would receive in a public school.
  - 3) For any child served pursuant to this Section, the school district shall develop a service plan that identifies the services that the district will provide to the child. The plan shall meet the requirements of Section 226-230 of this Part and shall be developed, reviewed, and revised consistent with Sections 226-200, 226-210, 226-220, and 226-530 of this Part.
  - 4) Services may be provided on site at a child's private school, including a religiously affiliated school, to the extent consistent with the provisions of IDEA (20 USC 1413(d)).
  - 5) Transportation to and from a site other than the private school shall be provided if necessary for a child to benefit from or participate in the other services offered.
  - 6) When a student receives services from a school district pursuant to this Section, the procedural safeguards described in Subpart F of this Part shall be available only with respect to complaints that the district has failed to fulfill the requirements of this Section. The due process requirements of Subpart G of this Part shall not apply.

## SUBPART E: DISCIPLINE

## Section 226.400 Disciplinary Actions

- a) School personnel may order the removal of an eligible child from his or her current placement for periods of no more than ten consecutive school days each in response to separate incidents of misconduct, as long as such repeated removals do not constitute a pattern based on consideration of the factors enumerated at 34 CFR 300.519. In such a

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case, these removals shall not be considered to constitute a change in placement.

- 1) After an eligible child has been removed from his or her placement for ten school days in the same school year, the district shall provide services to the child on any subsequent day(s) of removal.
- 2) School personnel, in consultation with the child's special education teacher, shall determine the extent of the services to be provided, which shall be adequate to enable the child to progress appropriately in the general curriculum and advance toward achieving the goals set forth in his or her IEP.
- 3) Any suspension of a student shall be reported immediately to the student's parents, along with a full statement of the reasons for the suspension, a copy of which shall also be given to the school board. The district shall provide the parents notice of their right to request that the district review the suspension decision, as required by Section 10-22.6 of the School Code [105 ILCS 5/10-22.6].
- 4) When a district first removes a child for more than ten school days in a school year or initiates a removal that will constitute a change in placement, the district shall, no later than ten business days after the date of such removal, either:
  - 1) convene an IEP meeting to review and, if necessary, revise the child's existing behavioral intervention plan as appropriate to address the child's behavior; or
  - 2) convene an IEP meeting to develop a plan for a functional behavioral assessment for the child and, as soon as possible thereafter, develop a behavioral intervention plan for the child in light of that assessment.
- 5) Upon any subsequent removal of a child that does not constitute a change in placement, the members of the IEP team shall review the child's behavioral intervention plan and its implementation. If any one member of the team believes that the plan needs to be modified, the district shall convene an IEP meeting to review the plan and revise it as the team deems appropriate.
- 6) A student may be suspended from using the transportation provided by the school district if his or her behavior warrants such a measure. A "bus suspension" shall be counted as a day of suspension from the educational program if:
  - 1) the student's IEP calls for transportation as a related service; and
  - 2) the district does not provide another means of transportation.
- 7) School personnel may order a change in placement for an eligible child to an interim alternative educational setting for the same amount of time that a child without a disability would be subject to discipline, up to a maximum of 45 days, if:
  - 1) the child carries a weapon, as defined at 34 CFR 300.520, to school or to a school function under the jurisdiction of a state or a local school district; or

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- 2) the child knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance, both as defined at 34 CFR 300.320, while at school or a school function under the jurisdiction of a state or a local school district.
- g) No later than ten school days after making the decision to place the child in the alternative setting, the district shall convene an IEP meeting as delineated in subsection (c) of this Section.
- h) The interim alternative educational setting in which a child is placed pursuant to subsection (f) of this Section shall be identified by the child's IEP Team.
  - 1) The setting shall be selected so as to enable the child to continue to progress in the general curriculum.
  - 2) While the child is served in the interim alternative educational setting, he or she shall continue to receive the services and modifications set forth in the IEP.
  - 3) The placement shall include services and modifications designed to address the behavior that resulted in the child's being removed from his or her current educational placement, so that it does not recur.
- i) No eligible child shall be expelled for behavior or a condition which is, or results from, the child's disability. If a district is considering expelling an eligible student, the district shall:
  - 1) Conduct a manifestation determination review as described in Section 226.410 of this Part;
  - 2) Adhere to the requirement of Section 10-22.6(a) of the School Code regarding meeting with the parent(s); and
  - 3) Maintain the child in an appropriate placement.
- j) An expulsion constitutes a change in placement and requires revision of the child's IEP in a manner that conforms to the applicable requirements of Subpart C of this Part. Cessation of services to an eligible child is prohibited during a period of expulsion.

**Section 226.410 Manifestation Determination Review**

The requirements of this Section shall apply whenever a disciplinary action is contemplated with respect to an eligible child that will constitute a change in placement and that action is being considered because of behavior that violates any rule or code of conduct of the school district that applies to all students.

- a) On the date when the district determines that disciplinary action will be taken, the district shall notify the parents in writing to that effect and shall notify them of the procedural safeguards that apply.
- b) As soon as possible, but in no event more than ten school days after the date on which the district determines that disciplinary action will be taken, the district shall conduct a review of the relationship between the child's disability and the behavior that is subject to the disciplinary action (a "manifestation determination review").
- c) The manifestation determination review shall be conducted by the Child

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- Review Team.
- d) The Child Review Team shall determine whether the child's behavior was a manifestation of his or her disability. In making its determination, the Child Review Team shall consider all available relevant information, including:
    - 1) evaluation and diagnostic results, including information supplied by the child's parent(s);
    - 2) observations of the child; and
    - 3) the child's current IEP and placement.
  - e) The team shall determine that the subject behavior was not a manifestation of the child's disability only if all of the following statements are true:
    - 1) The child's IEP and placement were appropriate, and special education services, supplementary aids and services, and behavioral intervention strategies were provided consistent with that IEP and that placement.
    - 2) The child's disability did not impair his or her ability to understand the impact and consequences of the behavior.
    - 3) The child's disability did not impair his or her ability to control the behavior.
  - f) If the child's behavior is determined to have been a manifestation of his or her disability, any deficiencies identified in the IEP or its implementation shall be remedied as soon as possible.
  - g) If the child's behavior is determined not to have been a manifestation of the disability, the district may apply relevant disciplinary procedures in the same manner as it would with respect to children without disabilities. In such a case, the district shall ensure that the student's special education and disciplinary records are provided for consideration by the person(s) making the final determination regarding the disciplinary action to be taken.
  - h) When the application of a disciplinary measure results in a change in placement, services shall be provided to the extent determined necessary by the IEP Team to enable the student to progress in the general curriculum and advance appropriately toward achieving the goals set forth in his or her IEP.

**Section 226.420 Appeals**

- a) If the child's parent disagrees with a determination that the child's behavior was not a manifestation of the disability or with any disciplinary decision regarding placement, the parent may request an expedited due process hearing in accordance with Subpart G of this Part.
- b) The local school district, upon receiving the parent's request for a due process hearing, shall immediately initiate the procedure set forth in Section 226.615 of this Part to request an expedited due process hearing.
- c) If a parent requests a due process hearing to challenge the interim

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alternative educational setting or the manifestation determination, the child shall remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the 45-day period, whichever occurs first, unless the parent and the district agree otherwise. The same shall apply if a parent appeals the decision of a hearing officer in this regard.

d) If a child's IEP team proposes a new placement to take effect upon the expiration of an interim placement, and if the child's parent wishes to challenge that new placement, the child shall return to the placement previously set forth in his or her IEP (i.e., prior to placement in the interim alternative educational setting) during the pendency of any due process hearing, except as provided in subsection (e) of this Section. (For purposes of this subsection (d), "new placement" may mean placement in the same alternative educational setting that was used as an interim alternative.)

e) If school personnel consider that it is too dangerous for the child to be returned to the current placement, the district may request an expedited due process hearing to extend the length of time the student may remain in the interim alternative educational setting. (See Section 226.655 of this Part.)

## Section 226.430 Protection for Children Not Yet Eligible for Special Education

a) A child who has not been determined eligible under this Part and who has engaged in behavior that violated any rule or code of conduct of the local school district may assert any of the protections provided for in this Part if the school district had knowledge that the child might be an eligible child before the occurrence of the behavior that precipitated disciplinary action.

b) A district shall be deemed to have knowledge that a child may be an eligible child if, prior to the incident:

1) The parent of the child has expressed concern in writing (or orally, if the parent is illiterate in English or has a disability that prevents a written statement) to personnel of the school district that the child is in need of special education and related services;

2) The behavior or performance of the child demonstrates the need for such services;

3) The parent of the child has requested an evaluation of the child; or

4) The child's teacher or another school employee has expressed concern in writing about the behavior or performance of the child to the director of special education or to other district personnel, in accordance with the district's child find or referral procedures.

c) A district shall not be deemed to have knowledge that a child may be an eligible child if:

1) the district determined that no evaluation was necessary or

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conducted an evaluation and determined that the child was not eligible; and

2) provided written notice to the child's parents of its determination.

d) If a district does not have knowledge that a child is or may be an eligible child prior to taking disciplinary measures against the child, the child may be subjected to the same disciplinary measures as those applied to children without disabilities engaging in comparable behavior.

1) When a request is made for an evaluation of a child during the time period when the child is subjected to disciplinary measures, the district shall conduct an evaluation in an expedited manner.

2) The child shall remain in the educational placement determined by school authorities, which may include suspension or expulsion without educational services, until the evaluation is completed.

3) The district shall provide special education and related services after developing an IEP if the child is determined to be eligible for special education and related services.

## Section 226.440 Referral to and Action by Law Enforcement and Judicial Authorities

a) Nothing in this Part prohibits a local school district from reporting a crime committed by a child with a disability to appropriate authorities as required by relevant statutes; or prevents state law enforcement and judicial authorities from exercising their responsibilities with regard to the application of federal and state law to crimes committed by a child with a disability.

b) A local school district reporting a crime committed by a child with a disability shall ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the authorities to whom it reports the crime, to the extent permitted by the Family Educational Rights and Privacy Act (20 USC 1232(g)).

## SUBPART F: PROCEDURAL SAFEGUARDS

## Section 226.500 Language of Notifications

a) The notices to individual parents required in this Subpart F shall be:

1) Written in language understandable to the general public; and

2) Provided in such a way as to accommodate the language use pattern of the respective parent, unless it is clearly not feasible to do so.

b) If the native language or other mode of communication of the parent is not a written language, the local school district shall ensure that:

1) The notice is translated orally or by other means to the parent in his or her native language or other mode of communication;

2) The parent understands the content of the notice; and



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- 3) There is written evidence in the child's record that the requirements of this subsection (b) have been met.

**Section 226.510 Notification of Parents' Rights**

- a) A written notification conforming to the requirements of subsection (b) of this Section shall be given to parents on at least the following occasions:
  - 1) Upon a child's initial referral for evaluation;
  - 2) Along with each notification of an IEP meeting;
  - 3) Along with each request for consent for the reevaluation of a child; and
  - 4) Upon receipt of a request for due process pursuant to this Part.
- b) The notification required by this Section shall include a full explanation of all of the rights available to parents concerning:
  - 1) Independent educational evaluation;
  - 2) Prior written notice;
  - 3) Parental consent;
  - 4) Inspection and review of all educational records having to do with:
    - A) The identification, evaluation, and educational placement of the child; and
    - B) The provision of FAPE to the child;
  - 5) The opportunity to present complaints;
  - 6) Procedures for students who are subject to placement in an interim alternative educational setting;
  - 7) Requirements for parents' unilateral placement of children in private schools at public expense;
  - 8) Mediation services;
  - 9) Due process hearings, including requirements for disclosure of evaluation results and recommendations;
  - 10) A child's placement during the pendency of due process proceedings; and
  - 11) Civil actions; and
  - 12) Attorneys' fees.

**Section 226.520 Notification of District's Proposal**

Ten days before a school district proposes or refuses to initiate or change the identification, evaluation, or educational placement of, or the provision of FAPE to, a child, the district shall provide written notice to the parent to that effect.

- a) If the notice relates to an action proposed by the school district that also requires parental consent, the district may give notice at the same time as it requests consent.
- b) The notice required by this Section shall include:
  - 1) A description of the action proposed or refused by the district;
  - 2) An explanation of why the district proposes or refuses to take

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the action:

- 3) A description of any other options that the district considered and the reasons why those options were rejected;
- 4) A description of each evaluation procedure, test, record, or report the district used as a basis for the proposed or refused action;
- 5) A description of any other factors that are relevant to the district's proposal or refusal;
- 6) A statement that the parents of an eligible child are protected by the procedural safeguards of this Part, and an indication of the means by which a description of those procedural safeguards may be obtained;
- 7) Sources for parents to contact to obtain assistance in understanding the provisions of this Part; and
- 8) If a meeting will be held, an indication of its purpose, time, and location and who will be in attendance.
  - c) A parent may waive the ten-day notice period before placement, allowing the district to place the child in the recommended program as soon as practicable.

**Section 226.530 Parents' Participation**

- a) Nothing in this Part precludes routine communication and consultation from occurring among school employees without parents in attendance, including preparatory activities that school personnel engage in to develop a proposal or a response to a parent's proposal that will be discussed at an IEP meeting.
- b) Whenever a meeting is to be held which a parent has a right to attend, the requirements of this subsection (b) shall apply.
  - 1) No later than ten days prior to the proposed date of the meeting, except for a meeting convened pursuant to Section 226.400(g) of this Part, the district shall notify the parent(s) in writing of the purpose of the meeting, the proposed date, time, and place for the meeting, who else will be in attendance, and the parent's right to invite other individuals with knowledge or special expertise regarding the child. If a parent indicates that the proposed date or time is inconvenient, the district shall make reasonable efforts to accommodate the parent's schedule.
  - 2) If neither parent can attend, the district shall use other methods to attempt to secure at least one parent's participation, including rescheduling the meeting, individual or conference telephone calls, or use of such other means of communication as may be available.
  - 3) A meeting may be conducted without a parent in attendance if the district is unable to obtain the parent's participation. In this case the district shall maintain a record of its attempts to arrange a mutually agreed on time and place, such as:
    - A) Detailed records of telephone calls made or attempted and

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the results of those calls;

- B) Copies of correspondence sent to the parents and any responses received; and
  - C) Detailed records of visits made to the parent's home or place of employment and the results of those visits.
- 4) The district shall take whatever action is necessary to facilitate the parent's understanding of and participation in the proceedings at a meeting, including arranging for an interpreter for parents who are deaf or whose native language is other than English.
- 5) Any document generated during the meeting shall be provided to the parent upon request, unless an applicable federal or State statute or federal regulation requires its automatic provision without a request.

**Section 226.540 Consent**

- a) A parent shall be considered to have given consent only when:
  - 1) The parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language or other mode of communication;
  - 2) The parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and
  - 3) The parent understands that his or her granting of consent is voluntary and may be revoked at any time by means of the due process described in Subpart G of this Part.
- b) A school district may not require parental consent as a condition of any benefit to the parent or the child except for the service or activity for which consent is required.
- c) Parental consent shall be obtained before conducting an initial case study evaluation of a child. Consent for initial evaluation shall not be construed as consent for initial placement.
- d) Parental consent shall be obtained before conducting any reevaluation of a child. If a parent fails or refuses to provide such consent within ten days after the district requests it, the district shall request a due process hearing.
- e) Parental consent shall be obtained prior to the initial provision of special education and related services.
- f) Parental consent shall be obtained prior to the use of the parent's private insurance to pay for services required by a child's IEP.
- g) Parental consent shall be obtained for the disclosure of personally identifiable information about a child, consistent with the requirements of the Student Records Act.
- h) Parental consent shall be obtained for the use of an IFSP instead of an IEP.
- i) If a parent desires to revoke consent, he or she shall request a due

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process hearing in accordance with Subpart G of this Part. Any revocation of consent as a result of a due process hearing is not retroactive, i.e., it does not negate an action that occurred after the consent was given and before it was revoked.

**Section 226.550 Surrogate Parents**

- a) Whenever the parent or guardian of a child who is or may be eligible for services pursuant to this Part is not known or unavailable, or when the child is a ward of the State living in a residential facility, a person shall be assigned to act as a surrogate parent for the child in matters relating to the identification, evaluation, and educational placement of the child and the provision of a free, appropriate public education to the child.
- 1) A foster parent is considered a parent for the purposes of this Section, so a child residing with a foster parent does not require a surrogate parent to represent him or her in educational matters.
- 2) When a child who is a ward of the State is placed in a residential facility, a representative of that facility shall submit to the State Board of Education a request for the appointment of a surrogate parent if the district has not already done so.
- b) The State Board of Education shall appoint a surrogate parent for each child who requires one, in keeping with the following requirements.
  - 1) All reasonable efforts shall be made to secure a surrogate parent whose racial, linguistic, and cultural background is similar to the child's.
  - 2) The surrogate parent shall have been trained by the State Board.
  - 3) The surrogate parent shall have no interest that conflicts with the interests of the child he or she will represent.
  - 4) The surrogate parent shall have the knowledge and skills needed to ensure adequate representation of the child.
  - 5) An individual may not be appointed as a surrogate parent for a child if he or she is:
    - A) employed by the State Board of Education;
    - B) employed by the school district in which the child is enrolled; or
    - C) employed by any other agency involved in the child's education.
- c) When a surrogate parent is appointed, the State Board of Education shall provide written notification to the local school district, the individual appointed, and, if applicable, the residential facility of the name and address of the surrogate parent, the specific responsibilities to be fulfilled, and the length of time for which the appointment is valid.
- d) Any person participating in good faith as a surrogate parent on behalf of a child before school officials or a hearing officer shall have

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immunity from civil or criminal liability that otherwise might result by reason of such participation, except in cases of willful and wanton misconduct.

- e) The services of any person assigned as a surrogate parent shall be terminated if the child's parent or guardian becomes available.
- f) When a child living in a residential facility no longer requires a surrogate parent, a representative of the facility shall notify the State Board of Education in writing to that effect. This notification shall include the reason for withdrawal of the request.
- g) When a surrogate parent's appointment is terminated, the State Board of Education shall so notify the surrogate parent, the local school district, and, if applicable, the residential facility.

## Section 226.560 Mediation

Each school district shall inform parents that the State Board of Education offers a process of mediation that can be used when there are disputes regarding the identification, evaluation, or placement of, or the provision of FAPE to, a child. This notification shall be provided at least whenever a due process hearing is requested.

- a) Each district shall ensure that, when used, the mediation process:
  - 1) is voluntarily entered into by all parties; and
  - 2) is not used to deny or delay a parent's right to a due process hearing, or to deny any other rights afforded under this Part.
- b) If either party is interested in participating in mediation, that party shall contact the State Board of Education.
- c) Each session in the mediation process shall be scheduled in a timely manner and held in a location that is convenient to the parties involved in the dispute.
- d) Discussions that occur during mediation shall be confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings. The parties to mediation shall be required to sign a confidentiality pledge prior to the commencement of the process.
- e) Any agreement reached in the course of mediation shall be set forth in writing and shall be consistent with applicable federal and State laws and regulations.
- f) The State Board of Education shall maintain a list of individuals who are qualified mediators and knowledgeable about the laws and regulations relating to the provision of special education and related services.
- g) Mediators shall be selected by the State Board from its list by rotation.
- h) The State Board of Education shall bear the cost of sending a mediator to sessions held pursuant to this Section and other, incidental costs.

## Section 226.570 Complaints

- a) A parent, individual, organization, or advocate may file a signed,

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written complaint with the State Board of Education alleging that a local school district, cooperative service unit or the State has violated the rights of one or more children with disabilities. Such a complaint shall include:

- 1) A statement that a responsible public entity has violated a requirement of this Part;
  - 2) The facts on which the statement is based; and
  - 3) The name(s) of the student(s) involved.
- b) A complaint shall only be considered if it alleges that the violation occurred not more than one year prior to the date on which the complaint is received, unless a longer period is reasonable because the violation is continuing, or the complainant is requesting compensatory services for a violation that occurred not more than three years prior to the date on which the complaint is received.
- c) Each complaint that complies with the requirements of subsections (a) and (b) of this Section shall be investigated within 60 days after its receipt by the State Board of Education. An extension of that time limit is allowed if exceptional circumstances exist with respect to a particular complaint.
- d) Upon completion of the State Board's investigation, the agency shall issue a letter of findings that sets forth:
- 1) the allegations of the complaint;
  - 2) findings of fact and conclusions;
  - 3) the reasons for the decision; and
  - 4) orders for any actions that are necessary to bring a school district into compliance with applicable requirements.
- e) If a written complaint is received by the State Board of Education involving a child who is not the subject of a due process hearing or a complaint, the State Board shall hold those portions of the complaint in abeyance pending the completion of the hearing. However, any issues that are not the subject of the hearing shall be resolved as provided in this Section.
- f) If a complaint is filed about an issue that has previously been decided in a due process hearing involving the same parties, the decision arising from that hearing shall be considered binding, and the State Board shall inform the complainant to that effect. A complaint alleging a local school district's failure to implement a decision arising from due process, however, shall be resolved by the State Board pursuant to Section 226.675 of this Part.

## SUBPART G: DUE PROCESS

## Section 226.600 Calculation of Timelines

In calculating the timelines specified in this Subpart G, Section 1.11 of the Statute on Statutes [5 ILCS 70/1.11] shall apply. The first day shall be excluded and the last day shall be included, unless the last day is Saturday, Sunday, or a holiday as defined or fixed in any statute now or hereafter in

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force in this State, in which case it shall be excluded. If the day succeeding such Saturday, Sunday, or holiday is also a holiday or Saturday or Sunday, then such succeeding day shall also be excluded.

**Section 226.605 Request for Hearing: Basis**

A parent, a school district, or a student may request an impartial due process hearing for any reason connected to the identification, evaluation, or placement of, or the provision of services to, a student who is or may be eligible pursuant to this Part. No other party shall have standing to submit such a request.

**Section 226.610 Information to Parents Concerning Right to Hearing**

a) Each school district shall inform parents in writing of their right to a hearing and the procedures for requesting one if the district is notified that a parent of the child is requesting a hearing in one of the following ways:

- 1) The district may provide the parent with a model form designed by the State Board of Education in accordance with 34 CFR 300.507(c)(1)(v)(3); or
- 2) The district may inform the parent that the request for a hearing must include the following information:
  - A) the name of the child;
  - B) the address of the child's residence;
  - C) the name of the school the child is attending;
  - D) a description of the nature of the problem relating to the proposed or refused initiation or change, including facts relating to the problem;
  - E) a proposed resolution of the problem, to the extent known and available to the parents at the time; and
  - F) if known, whether the parents will be represented by legal counsel.

b) The director of special education shall assist parents in taking whatever action is necessary to use the hearing process.

c) The district shall inform the parents of the availability of mediation and of any free or low-cost legal services and other publicly funded advocacy services available in the area if the parent requests the information, or if the parent or the district initiates a hearing.

**Section 226.615 Procedure for Request**

Pursuant to Section 226.605 of this Part, the local school district, the parent or any student resident within the district, or the student may request an impartial due process hearing. A parent's or student's request for a hearing shall be made in writing to the superintendent of the school district in which the student is a resident. (See Section 226.655 of this Part for requirements pertaining to expedited due process hearings.)

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a) If the district makes the request, it shall be sent in writing to the State Board of Education in Springfield, and at the same time a copy shall be sent to the other party. This letter shall include the information set forth in subsections b)(1)(A), (C) and (D) of this Section.

b) When a district receives a request for a hearing from a parent or from a student, then within five days after its receipt of the request the district shall:

- 1) Send a letter to the State Board of Education in Springfield requesting the appointment of an impartial due process hearing officer. This letter shall be delivered by certified mail or another means that provides written evidence of the delivery and shall include:
  - A) the name, address, and telephone number of the student and the parent, and of the person making the request for the hearing if other than the parent or the parent;
  - B) the date on which the request for the hearing was received by the local school district;
  - C) the nature of the controversy to be resolved;
  - D) the remedy being sought;
  - E) the primary language spoken by the parents and student; and
  - F) a copy of the request.
- 2) Send to the person requesting the hearing, by certified mail or another means providing written evidence of delivery, a copy of the letter sent to the State Superintendent.
  - A) If the hearing has been requested by the district or the student, the district shall inform the parents by certified mail of the request and invite them to participate in the proceedings.
  - B) All references to parents made in the remainder of this Subpart G shall be understood to include both the parents and the person requesting the hearing.

**Section 226.620 Denial of Hearing Request**

A request for an impartial due process hearing that conforms with Section 226.605 of this Part may not be denied for any reason.

**Section 226.625 Rights of the Parties Related to Hearings**

- a) The parties have the right to be represented at their own expense by counsel, or to be represented and assisted by other persons having special knowledge of this Part.
- b) The parents may inspect and review all school records pertaining to their child and, subject to the provisions of 23 Ill. Adm. Code 375.50 (Student Records), may obtain copies of any such records at their own expense.
- c) The parents shall have access to the district's list of independent



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evaluators, and may obtain an independent evaluation of their child at their own expense.

- 1) If the parents believe that acquisition of a completed independent evaluation will require a delay in convening the hearing, the parents shall request such a delay as provided in Section 226.640(c) of this Part.
- 2) The parents may ask the hearing officer to determine whether an independent evaluation is needed. If the hearing officer concludes, after reviewing the available information, that an independent evaluation is necessary to inform the hearing officer concerning the services to which the student may be entitled, it shall be so ordered and provided at the school district's expense. The hearing officer shall delay the hearing as provided for in Section 226.640(c).

- 3) This subsection (c) shall not apply to expedited hearings conducted pursuant to Section 226.655 of this Part.

- d) Either party to a hearing, other than an expedited hearing conducted pursuant to Section 226.655 of this Part, has the right to the disclosure, at least five days prior to the hearing, of any evidence to be introduced. Either party may prohibit the introduction of evidence which was not disclosed to that party at least five days prior to the hearing. The hearing officer may reschedule the hearing to permit full disclosure. Disclosure of evidence with respect to an expedited hearing shall conform to the requirements of Section 14-8.02b of the School Code [105 ILCS 5/14-8.02b].

- e) Either party may compel the attendance of any school district employee at the hearing, or any other person who may have information relevant to the needs, the abilities, the proposed program, or the status of the student. At the request of either party, the hearing officer shall authorize the issuance of subpoenas to compel the testimony of witnesses or the production of documents relevant to the case at issue. If any person refuses to comply with subpoenas issued pursuant to Section 226.640(c) of this Part, the hearing officer may request that the School Code [105 ILCS 5/14-8.02a(f)] be enforced.

- f) Pursuant to 34 CFR 300.508(b)(1), the parent has the right to have the child who is the subject of the hearing present at the hearing.
- g) Either party, or any other person participating in the hearing, may request that an interpreter be available during the hearing because one of the participants is hearing impaired and/or uses a primary language other than English. Such interpreters shall be provided at the school district's expense.

- h) The student's educational placement shall not be changed pending completion of the hearing except as provided in Section 14-8.02a(j) of the School Code.

- i) The hearing officer shall conduct the hearing in a fair, impartial, and orderly manner. The hearing officer shall afford each party an opportunity to present the evidence, testimony, and arguments each party believes necessary to support and/or clarify the issues in

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dispute and the relief the party is requesting. The hearing officer shall regulate the course of the hearing and the conduct of the parties and their counsel.

- j) The hearing shall be closed to the public unless the parents of the child specifically request that it be open. The hearing officer shall advise the parents of their right to have the hearing open to the public. If the parents make such a request, the hearing shall be open. (References to parents in this subsection (j) apply to the student if Section 226.690 of this Part applies.)
- k) The parties shall have the right to confront and cross-examine witnesses.

Section 226-630 Qualifications, Training, and Service of Impartial Due Process Hearing Officers

- a) In order to be considered for training as an impartial due process hearing officer, an individual either must hold a master's degree or a juris doctor degree or must hold a bachelor's degree in combination with relevant experience.

- 1) For purposes of this Subpart G, "relevant experience" means at least three years' experience, whether paid or voluntary, in special education, disability-related issues, or advocacy.

- 2) Employees of the state board of education, school districts, special education cooperatives, regional service areas or centers, regional educational cooperatives, state-operated elementary and secondary schools, or private providers of special education facilities or programs shall not be disqualified as potential hearing officers.

- 3) Except providers of services under 105 ILCS 5/14-8.03(c), Section 14-8.02a(f) of the School Code, the hearing officer shall not be disqualified as a potential hearing officer if, at the time of the hearing, the hearing officer is employed by, or current or former contractors to, the State Board of Education, school districts, special education cooperatives, regional service areas or centers, regional educational cooperatives, state-operated elementary and secondary schools, or private providers of special education facilities or programs shall not be disqualified as potential hearing officers by virtue of such employment or service.

- b) An individual wishing to be considered as an impartial due process hearing officer shall submit an application to the State Board. In completing the application form, which shall be provided by the State Board, the individual shall disclose at least the following information:

- 1) name and address;
- 2) degree(s) held;
- 3) current employment status, including if applicable the employer's name and the title of the employee's position;
- 4) school district of residence; and
- 5) professional background and relevant experience.

- c) Persons who have complied with the requirements of subsections (a) and

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- (b) of this Section shall, if recommended by the Screening Committee pursuant to Section 14-8.02a(b) of the School Code, then be invited to complete a training course conducted as provided in Section 14-8.02a(d) of the School Code. Failure to complete this training course successfully shall result in ineligibility to serve as a hearing officer.
- d) Based on the recommendations of the training entity, interviews, and supporting information, the due process screening committee, applying the objective criteria developed by the Advisory Council on Education of Children with Disabilities, shall recommend to the Advisory Council those candidates to be appointed as impartial due process hearing officers. The number of candidates recommended shall equal 150% of the number deemed necessary by the State Board of Education.
- e) Each hearing officer shall at least annually attend a review session and/or training course pursuant to Section 14-8.02a(d) of the School Code. Failure to attend a required review session or training course shall result in the hearing officer's termination.
- f) Conditions of Service

Hearing Officers' terms of service and subsequent reappointment shall be as provided in Section 14-8.02a(d) and (e) of the School Code.

- 1) A hearing officer shall accept each case to which he or she is assigned, unless:

- A) the hearing officer is ill;
  - B) the hearing officer has a personal, professional, or financial interest which would conflict with his or her objectivity with respect to a particular case; or
  - C) the hearing officer is ineligible to accept a particular case pursuant to Section 226.635(a) of this Part.
- 2) A hearing officer whose other commitments will interfere with his or her ability to accept and prepare a case within 15 days shall so notify the State Board of Education in writing.

## Section 226.635 Appointment of Impartial Due Process Hearing Officer

- a) Upon receipt of a request for a hearing the State Board shall, within five days (one day for an expedited hearing) and using the rotation system called for in Section 14-8.02a(f) of the School Code, appoint an impartial due process hearing officer and notify that individual and the parties of his or her appointment. Prior to making any appointment, the State Board shall review the background of the prospective appointee in order to establish that:
- 1) the individual has never been employed by or administratively connected with the school district or special education cooperative involved in the case;
  - 2) the individual is not a resident of the district involved; and
  - 3) the prospective appointee has no apparent personal, professional, or financial interest that would interfere with his or her objectivity regarding the matter at issue.

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- b) An appointee who does not meet the requirements set forth in subsection (a) of this Section shall recuse himself or herself within five days after receiving notification of the appointment, except that an appointee in an expedited hearing shall recuse himself or herself immediately if recusal is necessary. Notification to the State Board of Education shall also be made by telephone, provided that a written statement is also supplied.
- c) A party to a due process hearing conducted under Section 14-8.02a of the School Code shall be permitted one substitution of a hearing officer as a matter of right (105 ILCS 5/14-8.02a(f)). A request for a substitute hearing officer shall be made in writing to the State Board of Education within five days after the verified date of delivery of the notification at the last known address. In the event that both parties submit written requests on the same day and both should be received simultaneously, the State Board of Education shall deem the substitution to have been at the request of the party initially requesting the hearing. The right of the other party to a substitution will thereby be absolutely protected.
- d) Section 14-8.02a(f) of the School Code contemplates two situations requiring the appointment of a hearing officer other than the individual who originally receives the case under the rotation system and specifies different methods of selecting a replacement.
- 1) When the appointed hearing officer is unavailable or recuses himself or herself before the parties are notified of his or her appointment, the State Board shall appoint the next scheduled hearing officer under the rotation system.
  - 2) When a hearing officer recuses himself or herself after learning the circumstances of a case, or when a party to the hearing submits a proper request for substitution, the State Board shall select and appoint another hearing officer at random.

## Section 226.640 Scheduling the Hearing and Pre-Hearing Conference

The provisions of this Section shall not apply to expedited hearings conducted pursuant to Section 226.635 of this Part.

- a) Within five days after receiving written notification by the State Board, the appointed hearing officer shall contact the parties to determine a time and place reasonably convenient to the parties and otherwise in accordance with Section 14-8.02a(g) of the School Code for convening the hearing and pre-hearing conference.
- b) The hearing officer shall provide the parties at least ten days' written notice of the dates, times, and locations of the pre-hearing conference and the hearing.
- c) Either party may request a delay in convening the hearing and/or the pre-hearing conference. The party requesting a delay shall do so in writing to the hearing officer, with a copy sent at the same time to the other party. The requesting party shall set forth the reasons for the request. The hearing officer shall either grant or deny the

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request and shall so inform the parties and the State Board of Education in writing. The hearing officer shall determine a new time and date for convening the hearing and/or pre-hearing conference.

- 1) If the parties jointly propose a delay in convening the hearing or pre-hearing conference, it shall be delayed as agreed. The hearing officer, being advised of such agreement, shall confirm the delay in writing to the parties and the State Board of Education. Such notice shall become part of the administrative record.

- 2) If the parties cannot agree to a mutually convenient time and place for convening the hearing and/or pre-hearing conference, the hearing officer shall fix such time and place, notify the parties in writing, and proceed to convene and conduct the pre-hearing conference and hearing, provided that the delay shall not continue for a period longer than necessitated by the circumstances that precipitated the delay.

**Section 226.645 Conducting the Pre-Hearing Conference**

- a) The hearing officer shall convene the pre-hearing conference in accordance with Section 14-8.024(g) of the School Code.
- b) Any party to the pre-hearing conference shall be permitted to participate by teleconference (Section 14-8.024(g) of the School Code). It shall be the responsibility of the parties to ensure that any information required at the pre-hearing conference is received by the hearing officer and the other party prior to the conference.
- c) At the conclusion of the pre-hearing conference, the hearing officer shall prepare a report of the conference that shall be entered into the hearing record. The report shall include, but need not be limited to:
  - 1) the issues, the order of presentation, and any scheduling accommodations that have been made for the parties or witnesses;
  - 2) a determination of the relevance and materiality of documents or witnesses, if raised by a party or the hearing officer; and
  - 3) such stipulations of fact as have been agreed to during the pre-hearing conference.
- d) The provisions of this Section shall not apply to expedited hearings conducted pursuant to Section 226.655 of this Part.

**Section 226.650 Child's Status During Due Process Hearing**

- a) Except as provided in Section 226.655 of this Part, during the pendency of any administrative or judicial proceeding regarding a due process hearing decision, the child shall remain in his or her current educational placement unless the State or local agency and the parents of the child agree otherwise.
- b) If the due process hearing involves an application for initial admission to the public school, the child, with the consent of the

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parents, shall be placed in the public school until the completion of all the proceedings.

- c) If the decision of a hearing officer agrees with the child's parents that a change of placement is appropriate, that placement shall be treated as an agreement between the State or local agency and the parents for purposes of subsection (a) of this Section.

**Section 226.655 Expedited Due Process Hearing**

Requests for expedited due process hearings shall be made in accordance with Section 14-8.02b of the School Code.

- a) The State Board of Education shall arrange for an expedited hearing when:
  - 1) The local school district requests such a hearing because school personnel maintain that it is dangerous for the child to be in the current placement.
  - 2) The parent requests such a hearing because the parent disagrees with the district's placement decision when a child is moved to an interim alternative educational setting for a weapon or drug violation.
  - 3) The parent requests such a hearing because the parent disagrees with the district's determination that a child's behavior was not a manifestation of the child's disability.
- b) During the pendency of the expedited hearing, the child's placement shall be determined by the IEP team.
- c) The hearing officer shall determine:
  - 1) whether the child shall be placed in the proposed alternative educational setting; or
  - 2) whether the local school district has demonstrated that the child's behavior was not a manifestation of the child's disability (see Section 226.410 of this Part).
- d) The hearing officer shall consider the following factors in determining whether an interim alternative placement is appropriate:
  - 1) Whether the local school district has demonstrated by substantial evidence (i.e., beyond a preponderance of the evidence) that maintaining the current placement of the child is substantially likely to result in injury to the child or to others;
  - 2) Whether the child's current placement is appropriate;
  - 3) Whether the district has made reasonable efforts to minimize the risk of harm in the child's current placement, including the use of supplementary aids and services; and
  - 4) Whether the interim alternative educational setting will permit full implementation of the student's IEP.
- e) If all the conditions set forth in subsection (d) of this Section are met, the hearing officer shall order a change in the child's placement to an appropriate interim alternative educational setting for not more than 45 days.
  - 1) This new alternative educational setting shall be identified by

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- the IEP Team as provided in Section 226.400(h) of this Part.
- 2) If the district demonstrates that the student is substantially likely to injure himself or herself or others if returned to the placement that was used prior to the student's removal, the hearing officer may order that the student remain in the interim setting for subsequent periods of up to 45 days each.
- f) An expedited hearing shall result in a decision within ten school days after the request for the hearing, unless the parents and the local school district agree otherwise.

**Section 226.660 Powers and Duties of Hearing Officer**

- a) *Once appointed, the impartial due process hearing officer shall not communicate with the State Board of Education or its employees concerning the hearing [105 ICS 5/8.02a(g)] and shall not initiate or participate in any ex parte communications with the parties, except as provided in Section 14-8.02a(g) or 14-8.02b of the School Code, as applicable.*
- b) *The hearing officer shall disclose any actual or potential conflict of interest to the parties upon learning of such a conflict.*
- c) *The hearing officer shall conduct the hearing and, with respect to the hearing, shall have, but is not limited to, the following powers:*
- 1) To administer, or to authorize the court reporter to administer, oaths;
  - 2) To examine witnesses;
  - 3) To subpoena the assistance of subpoenas;
  - 4) To rule upon the admissibility of evidence;
  - 5) To order independent evaluation of time;
  - 6) To grant specific extensions of time;
  - 7) To read into the hearing record any stipulations of fact and other matters agreed upon at the pre-hearing conference and to enter into the record any pre-hearing orders;
  - 8) To render decisions and issue orders and clarifications.
- d) *The hearing officer shall comply with timelines established in Section 14-8.02a or Section 14-8.02b of the School Code, as applicable.*

**Section 226.665 Record of Proceedings**

The hearing officer shall ensure that an electronic verbatim record of the hearing is made in the format of the parent's choice (such as by tape recording or by a court reporter). The hearing officer shall also ensure that all written evidence presented at the hearing is marked to indicate the party offering the evidence and is made part of the administrative record. The parents or the district may obtain a copy of the verbatim record of the hearing. The State Board and the district shall share equally the cost of providing these copies.

**Section 226.670 Decision of Hearing Officer; Clarification**

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- a) Within ten days after the conclusion of the hearing (two days for an expedited hearing), the hearing officer shall issue a written decision that sets forth the issues in dispute, findings of fact based upon the evidence and testimony presented, and the hearing officer's conclusions of law and orders. The hearing officer shall order the parties to take all steps necessary to ensure appropriate placement and services for any student found to be eligible for special education services. The hearing officer shall specify the procedures necessary to ensure timely compliance with his or her order, in accordance with Section 14-8.02a(j) of the School Code.
- b) The hearing officer's decision shall be sent by certified mail to the parties enumerated in Section 14-8.02a(h) of the School Code. The decision shall be translated into the native language of the parents if their primary language is other than English.
- c) A written decision shall be binding upon the parties unless a party aggrieved by the decision commences a civil action as provided in Section 14-8.02a(i) of the School Code.
- d) As provided in Section 14-8.02a(h) of the School Code, the hearing officer shall retain jurisdiction after issuance of his or her decision for the sole purpose of considering a request for clarification. A request for clarification shall be submitted and acted upon as provided in Section 14-8.02a(h) of the School Code. In the decision either preceding the hearing, the hearing officer shall retain jurisdiction until the 45th day after the initial removal of the student or until 45 days after that hearing officer's latest decision in the case.
- e) The hearing decision, if not appealed pursuant to subsection (c) of this Section, shall be enforced by the State Board as provided in Section 226.675 of this Part.

**Section 226.675 Monitoring and Enforcement of Decisions; Notice of Ineligibility for Funding**

Upon receipt of the hearing officer's decision, the State Board of Education shall review the decision and monitor compliance by the parties with the terms of the decision. If the district fails to comply with the decision in the time specified by the hearing officer, the State Board of Education shall notify the parties in writing by certified mail that it finds the district to be in noncompliance with the decision, and that the noncompliance may result in loss of recognition status of the district's programs by the State, withholding of State or federal funds which the district would otherwise be eligible to receive, or in other enforcement action unless the district remedies the noncompliance within the time period specified in the notice of noncompliance.

**Section 226.680 Reporting of Decisions**

The State Board of Education shall, after deleting all personally identifiable information and indexing by subject matter, make the decisions of impartial due



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process hearing officers available to the Illinois State Advisory Council on Education of Children with Disabilities, to impartial due process hearing officers, and to the Screening Committee established pursuant to Section 14-8.02a(b) of the School Code. This information shall also be available to other interested parties upon request.

## Section 226.690 Transfer of Parental Rights

- a) When a student with a disability reaches the age of majority (18 years of age; see 755 ICUS 5/11-1) or becomes an emancipated minor pursuant to the Emancipation of Mature Minors Act (750 ICUS 30) (except for a student with a disability who has been adjudged as a disabled person pursuant to 755 ICUS 5/Art. 11a):
  - 1) The school district shall provide any notice required by this Part to both the individual and the parents, and all other rights accorded to parents under Part B of the Individuals with Disabilities Education Act, the implementing regulations at 34 CFR 300, and this Part shall transfer to the student; and
  - 2) All rights accorded to parents under Part B of the Individuals with Disabilities Education Act, the implementing regulations at 34 CFR 300, and this Part shall transfer to a child who is incarcerated in an adult or juvenile, State, or local correctional institution.
- b) Whenever rights are transferred to a student pursuant to this Section, the district shall notify the student and the parents of the transfer of rights.

## SUBPART H: ADMINISTRATIVE REQUIREMENTS

## Section 226.700 General

- a) Each school district shall provide and maintain appropriate and effective educational programs, at no cost to the parents, for all eligible children who are residents of the district.
- b) Each school district shall establish and implement a goal of ensuring full educational opportunity for all children with disabilities in its service area. Each district shall make available to children with disabilities the variety of educational programs and services available to nondisabled children in the area served by the district, including art, music, industrial arts, consumer and homemaking education, and vocational education.
- c) Special education and related services shall be established and conducted as an integral part of the district's educational effort.
- d) Each school district, independently or in cooperation with other districts, shall provide a comprehensive program of special education for children with disabilities who are from three to 21 years of age and who are resident in the district. A "comprehensive program" is one that includes:

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- 1) A viable organizational and financial structure;
  - 2) Systematic procedures for identifying and evaluating the need for special education and related services;
  - 3) A continuum of appropriate alternative placements available to meet the needs of children for special education and related services (see Section 226.300 of this Part);
  - 4) Qualified personnel who are employed in sufficient number to provide:
    - A) Administration of the program;
    - B) Supervisory services;
    - C) Instructional and resource services;
    - D) Related services; and
    - E) Transportation services;
  - 5) Appropriate and adequate facilities, equipment and materials;
  - 6) Functional relationships with public and private agencies that can supplement or enhance the special education services of the public schools;
  - 7) Interaction with parents and other concerned persons that facilitates the educational development of children with disabilities;
  - 8) Procedures for internal evaluation of the special education services provided; and
  - 9) Continuous planning for program growth and improvement based on internal and external evaluation.
- e) A school district is the primary agent for the delivery of special education services. Districts may carry out their obligations with regard to special education by forming cooperatives or joint agreements. These entities are:
- 1) Authorized by State law to develop, manage, and provide services or programs on behalf of school districts;
  - 2) Recognized as agencies for purposes of the provision of special education and related services provided within public elementary and secondary schools of the State;
  - 3) Considered as service agents of the participating districts; and
  - 4) Directed by, and responsible to, all the participating local districts.
- f) Special education and related services which would not comply with specific requirements of this Part shall require written approval from the State Board of Education prior to their implementation. A district's request for approval shall be submitted in writing to the State Board and shall include a description of the district's proposal. In determining whether to approve such a request, the State Board's staff shall consider whether the proposed program or service will compromise students' educational opportunity or prevent the full implementation of any student's IEP, in light of such factors as the students' disabilities and the proposed class size, staff qualifications, physical plant and evaluation plan. Denial of such a request may be appealed to the State Superintendent of Education.

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## Section 226-710 Policies and Procedures

- a) Each local school district, or the cooperative entity of which it is a member, shall develop written policies and procedures conforming to the requirements of subsection (b) of this Section and shall submit these to the State Board of Education for approval, using a format supplied by the State Board. The State Board shall approve those which conform to the requirements of this Section and are consistent with applicable federal and State statutes and regulations. The State Board shall notify districts of any deficiencies that must be remedied before approval will be granted.
- b) Each set of policies and procedures shall address the district's compliance with at least the requirements for:
  - 1) the provision of a free appropriate public education;
  - 2) child find;
  - 3) evaluation and determination of eligibility;
  - 4) individualized Education Programs;
  - 5) students' participation in assessments;
  - 6) serving students in the least restrictive environment;
  - 7) transition of children served under Part C of the Individuals with Disabilities Education Act into preschool programs;
  - 8) serving students who attend nonpublic schools;
  - 9) procedural safeguards;
  - 10) establishing the goal of full educational opportunity;
  - 11) confidentiality of personally identifiable information; and
  - 12) the use of federal matching funds under the Medicaid (Title XIX) or Children's Health Insurance (KidCare; Title XXI) program to supplement special education programs and services (if the district is participating in one or more of those federal programs).
- c) Any revision of a set of policies and procedures shall be submitted to the State Board for approval prior to its implementation.
- d) Each set of policies and procedures shall constitute a public document.

## Section 226-720 Facilities and Classes

- a) Facilities used for special education services shall be appropriate to, and adequate for, the specific programs or services for which they are used, and pursuant to Section 14-8.01 of the School Code, shall be subject to the applicable provisions of 23 Ill. Adm. Code 180 (Health/Life Safety Code for Public Schools). Such facilities shall be at least comparable to those provided to the students in the general education environment.
- b) The age range of students within a special education grouping shall not exceed four years at the elementary level and six years at the secondary level. Early childhood classes and services shall serve only children from three through five years of age.

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- c) Special education classes and services shall be delivered in age-appropriate settings.

## Section 226-730 Case Load/Class Size

In the formation of special education classes, consideration shall be given to the age of the students, the nature and severity of their disability, and the degree of intervention necessary.

- a) An "instructional" class or service is one provided to a student for 60 percent or more of the school day.
  - 1) Early childhood instructional classes or services shall have a maximum ratio of one qualified teacher to five students in attendance at any given time; total enrollment shall be limited according to the needs of the students for individualized programming.
  - 2) Instructional classes or services for children whose disability is either severe/profound in degree or multiple in nature shall have a maximum enrollment of five students.
  - 3) Instructional classes or services for children whose primary disability is a severe visual, auditory, physical, speech or language impairment, autism, traumatic brain injury, or an emotional disturbance or behavioral disorder shall have a maximum enrollment of eight students.
  - 4) Instructional classes or services for children whose primary disability is a learning disability or which serve children with differing exceptional characteristics shall have a maximum enrollment of ten students. Instructional programs that group students with differing exceptional characteristics shall be formulated only under the following circumstances:
    - A) The students are grouped in relation to a common educational need; or
    - B) The program can be completely individualized and the teacher is qualified to plan and provide an appropriate educational program for each student in the group.
  - 5) Instructional classes or services designed for children whose primary disability is moderate visual or auditory impairment shall have a maximum enrollment of twelve students.
  - 6) Instructional classes or services for children whose primary disability is mild/moderate mental impairment shall have a maximum enrollment of 12 students at the primary level and 15 students at the intermediate, middle, junior high, and secondary levels.
  - 7) A school district may increase the enrollment in an instructional class or service by a maximum of two students in response to unique circumstances which occur during the school year. Such additions may be made only when the educational needs of all students who would be enrolled in the expanded program can be adequately and appropriately met. Alternatively, the district

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may increase the enrollment in an instructional class or service by a maximum of five students when a full-time, noncertified assistant is provided.

- b) A "resource" class or service is one provided to a student for 20-60 percent of the school day.

1) Enrollment shall be limited to the number of students who can effectively and appropriately receive assistance, up to a maximum of 20 students.

2) The teacher or service provider shall participate in determining the appropriate enrollment.

3) The number of children served by a speech-language pathologist shall be based on the severity of the speech-language needs of each child. At no time shall the caseload exceed 80 students.

- c) In a class or service provided to a student for less than 20 percent of the school day, enrollment shall be limited to the number of students who can effectively and appropriately receive assistance, up to a maximum of 20 students.

## Section 226.740 Records; Confidentiality

a) Students' records shall be maintained in accordance with the School Student Records Act (105 ILCS 101) and the rules of the State Board of Education (23 Ill. Adm. Code 375).

b) Each school district shall protect the confidentiality of personally identifiable information during its collection, storage, disclosure, and destruction.

c) All persons collecting or using personally identifiable information shall receive training or instruction regarding the State's and school district's policies and procedures and the requirements of this Part for ensuring the confidentiality of any personally identifiable information collected, used or maintained.

d) Each school district shall maintain, for public inspection, a current listing of the names and positions of those employees within the local school district who may have access to personally identifiable information.

e) Parents shall be afforded the opportunity to inspect and review all educational records with respect to the identification, evaluation, educational placement, and provision of FAPE to their child.

f) The portion of each district's policies and procedures that is required pursuant to Section 226.710(b)(3) of this Part shall require that all information maintained concerning a student receiving special education be directly related to the provision of services to that child and shall address:

- 1) the method by which information concerning a student will be collected;
- 2) the confidential nature of such information;
- 3) the use to which such information will be put;
- 4) how such information will be recorded and maintained;

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- 5) the period for which such information will be maintained;
  - 6) the persons to whom such information will be available; and
  - 7) under what circumstances such information will be made available.
- g) The portion of each district's policies and procedures referred to in subsection (f) of this Section shall be consistent with:

- 1) The Illinois School Student Records Act;
- 2) 23 Ill. Adm. Code 375 (Student Records); and
- 3) 23 Ill. Adm. Code 1 (Public Schools Evaluation, Recognition and Supervision).

## Section 226.750 Additional Services

The additional services and activities referred to in this Section shall be provided to students whose IEPs require them. In each such case, the relevant requirements of this Section shall apply.

- a) Assistive Technology
- 1) The responsible school district shall furnish such assistive technology devices as a child's IEP may prescribe, including providing these in the child's home if required in order for the child to receive FAPE.

2) Each school district shall ensure that hearing aids and assistive technology or adaptive devices are functioning properly.

- b) Behavioral Intervention

1) School districts shall establish local policies and procedures on the use of positive behavioral interventions to manage, intervene in, or change the behavior of students with disabilities.

2) Each district's policies and procedures shall require that IEP teams consider strategies including positive behavioral interventions and supports to address behavior(s) which impede a child's functioning or that of other children in the academic setting or in noninstructional contexts such as regular transportation and extracurricular activities. The district's policies and procedures shall include criteria for determining when a particular student's possible need for a behavioral intervention plan should be reviewed.

3) Behavioral interventions shall be used in consideration of the child's physical freedom, social interaction, and right to placement in the least restrictive environment and shall be administered in a manner that respects human dignity and personal privacy.

- c) Extended School Year
- A school district shall not limit its provision of services during an extended school year to particular categories of disability, nor shall a district unilaterally limit the type, amount, or duration of such services.

d) Physical Education

Physical education services, specially designed if necessary, shall be made available to every child receiving FAPE.

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- 1) Each child with a disability shall participate in a regular physical education program available to nondisabled children unless the child is receiving services full time in a separate facility or needs specially designed physical education, as prescribed in the child's IEP.
- 2) If a child is receiving services full time in a separate facility, the school district shall ensure that he or she receives physical education services appropriate to his or her needs.

## e) Transportation

Each child who is eligible for special education and related services pursuant to this Part shall be eligible for special transportation. Such transportation shall be provided as the child's disability or the program location may require.

- 1) Arrival and departure times shall ensure a full instructional day which is comparable to that of the regular education students. Any deviation from this standard must be based upon the individual needs of the child and reflected in the child's IEP.
  - 2) A child's daily travel time shall not ordinarily exceed one hour each way except as made necessary by temporary road or weather conditions.
  - 3) The special transportation shall be scheduled in such a way that the child's health and ability to relate to the educational experience are not adversely affected.
  - 4) Vehicles utilized for special transportation shall be adapted to the specific needs of the children receiving this service.
  - 5) Personnel responsible for special transportation shall be given training experiences which will enable them to understand and appropriately relate to children with disabilities.
  - 6) When a district has placed students in a State-operated or nonpublic day program, the district shall provide transportation for the children in that program. Other services may be provided as agreed upon by the district and the facility.
  - 7) When a child is placed in a residential facility, the school district shall provide transportation services for the child's initial trip to the facility and return home at the close of the school term. The district shall likewise provide transportation for the child at the beginning and end of each school term thereafter.
- A) If the district assumes responsibility for transportation arrangements, it shall provide reasonable notice to parents of departure dates and times. It shall in all instances notify the parents within 48 hours after completing those arrangements.
- B) The mode(s) of travel and degree of support and supervision to be provided shall be included in the student's IEP.
- C) The district shall provide transportation services for one round trip home, at a midterm break or at another time as

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- mutually agreed by the district and the parents, and at any additional time when the facility is to be temporarily closed.
- D) The school district shall provide round-trip transportation at any time the student seeks additional diagnostic assessments of the student or if the parent wishes the child to be present during a due process hearing.
  - E) The school district shall provide round-trip transportation in emergencies such as serious illness of the child or death or imminent death of an individual in the child's immediate family. "Immediate family" includes a parent, a grandparent, a sibling, or any person who resides in the child's immediate household. If the district questions the severity of an illness of the child or an immediate family member, it may require the opinion of a licensed physician to corroborate the severity of the illness.
  - F) The school district may also provide transportation services to encourage family contacts and/or to reintegrate the child into the home and community. The district shall have the authority to determine, upon consultation with the parents, when transportation is appropriate for this purpose and shall incorporate this decision, with the specific reasons for it, into the student's IEP.

## f) Vocational Education

Students eligible pursuant to this Part shall receive vocational education in accordance with their individual IEPs.

- 1) Community work experiences which are part of a student's vocational plan shall occur during the school day, unless this is precluded by the nature of the experiences.
- 2) No student shall spend more than one-half of the established school day participating in community work experiences or in local rehabilitation facilities.
- 3) All community work experiences which are provided by the school as part of the vocational plan and for which the student receives educational credit shall be supervised by school personnel.

## Section 226.760 Evaluation of Special Education

- a) The extent to which a school district is fulfilling its responsibilities to children with disabilities shall be determined by the State Board of Education. Official representatives of the State Board shall be authorized to examine all documentation, including student records, which would facilitate such determination.
- b) Evaluation by the State Board of Education shall focus on the district's provision of special education services, on each special education cooperative organization of which it is a participant, and on community resources utilized by the district.
- c) Evaluation of special education services shall be based on all of the



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following elements.

- 1) Comprehensive Plan  
Each district or cooperative entity shall have in place a comprehensive plan conforming to the requirements of 34 CFR 300.137 that describes the district's provision of special education services, its plan for program improvement, and those factors unique to the individual district or cooperative which must be considered in the evaluation. This plan shall be filed with the State Board of Education and revised at least triennially. The plan shall be a public document.
- 2) Policies and Procedures  
The State Board shall consider the adequacy of the policies and procedures developed pursuant to Section 226.710 of this Part.
- 3) Continuous Internal Evaluation  
Each district or cooperative entity shall develop and implement procedures to assess the extent to which children with disabilities are being adequately served and the effectiveness of each special education service.
- 4) Records  
Each district or cooperative entity shall maintain records to demonstrate compliance with the assurances it furnishes in its applications for State and federal funds.
- d) The State Board of Education shall provide written reports of its evaluations and any subsequent recommendations or actions to the appropriate board(s) of education.
- e) Compliance with the requirements of this Part shall be a factor in determining a district's recognition status pursuant to 23 Ill. Adm. Code 1 (Public Schools Evaluation, Recognition and Supervision).
- f) A district that receives an unfavorable evaluation of its compliance with the requirements of this Part shall have the opportunity to request a hearing pursuant to the Illinois Administrative Procedure Act [5 ILCS 100] and the State Board's rules for Contested Cases and Other Formal Hearings (23 Ill. Adm. Code 475).

Section 226.770 Fiscal Provisions

- a) Requirements Related to the Provision of FAPE  
1) A school district is responsible for developing students' IEPs and remains responsible for ensuring that children receive all the services described in their IEPs in a timely fashion, regardless of whether another agency will ultimately pay for the services.
- 2) A school district may look to non-educational entities such as insurance companies and the Medicaid program to pay for services for which such entities are otherwise responsible. The district must have written consent from parents in order to use their private insurance. Notice to affected parents is required if the district has reason to know some students may be eligible for

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- Medicaid or the KidCare program, and parents shall receive notice from the district if it claims funding under either of these programs for related services their child is receiving.
- 3) Services required by an IEP must be provided at no cost to the child's parents, whether they have public or private insurance. Parents shall be notified that the use of their insurance proceeds to pay for services is voluntary. In the case of a child who is dually insured (through private insurance and Medicaid), a family shall not be required to draw upon private insurance whose use is a prerequisite to billing Medicaid if that use of insurance will result in financial costs to the family.
  - 4) "Financial costs to the family" include:
    - A) Out-of-pocket expenses incurred in filing a claim, such as the payment of a deductible or required co-payment, but not including incidental costs such as the time needed to file an insurance claim or the postage needed to mail the claim;
    - B) A decrease in available lifetime coverage or any other benefit under an insurance policy; and
    - C) An increase in premiums on the discontinuation of a policy.
  - b) The federal regulations implementing the Individuals with Disabilities Education Act (see 34 CFR 300) establish detailed requirements for the use of federal funds in connection with service to students who are eligible under this Part. School districts and cooperative entities are required to comply with those federal requirements.
  - c) School districts and cooperative entities shall use federal matching funds received under Medicaid or the KidCare program only to supplement special education programs and services. Each school district or cooperative entity shall submit an annual record of its expenditures of these funds on a form supplied by the State Board of Education.
  - d) Computation of Reimbursement Under Section 14-7.03 of the School Code  
The amount of reimbursement for which a district shall be eligible under Section 14-7.03 of the School Code shall be computed by determining the actual cost of maintaining the program in accordance with the State Board's rules for Determining Special Education Per Capita Tuition Charge (23 Ill. Adm. Code 130), as further specified in this subsection (d).
    - 1) the district's cost for administration and supervision shall be computed based on the relationship that the average daily membership of children in special education classes bears to the district's total average daily membership.
    - 2) The cost of buildings and facilities shall not exceed 10% of the expenditures for classes.
    - 3) All payments authorized by law, including State or federal grants for the education of children, shall be deducted when program reimbursement or per capita tuition is calculated.
    - 4) The total reimbursement for a child who is living in a residential care facility and who has been placed in a nonpublic

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special education program by the responsible district shall not exceed the amount authorized under Section 14-7.02 of the School Code.

**e) Eligibility of Students for Funding Under Section 14-7.03 of the School Code**

1) A student who meets the requirements of Section 14-1.11a(5) of the School Code [105 ILCS 5/14-1.11a(5)] is eligible for reimbursement under Section 14-7.03 of the School Code if he or she:

- A) is a resident of one of the residential care facilities described in Section 226.320(a) of this Part;
  - B) would not be a resident of that school district except by virtue of his or her placement in one of the residential care facilities described in Section 226.320(a) of this Part; and
  - C) has been declared eligible for special education and related services pursuant to this Part.
- 2) A student who has been declared eligible for special education and related services pursuant to this Part and is living in a State residential unit or county-operated detention center is eligible for reimbursement under Section 14-7.03 of the School Code.

## SUBPART I: PERSONNEL

**Section 226.800 Personnel Required to be Qualified**

**a) General**

- 1) Each school district, or the cooperative entity of which it is a member, shall employ sufficient professional and noncertified personnel to deliver and supervise the full continuum of special education and related services needed by the eligible students who reside in the district. The number and types of personnel employed shall be based on students' need rather than administrative convenience.
- 2) Each district or cooperative entity shall periodically submit to the State Board of Education, on forms supplied by the State Board, the roster of the individuals who will be or are providing special education or related services. The State Board may request any additional documentation needed in order to verify that each such individual holds the qualifications that are required for his or her assignment(s).
- 3) Reimbursement for personnel expenditures shall be made by the State Board only with respect to individuals who are qualified pursuant to this Section or pursuant to Section 226.810 or 226.820 of this Part.
- 4) Each district or cooperative entity shall develop and implement a comprehensive personnel development program for all personnel

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involved with the education of children with disabilities.

b) Professional instructional Personnel.  
Each individual employed in a professional instructional capacity shall hold either:

- 1) a valid special certificate and the qualifications required for the teaching area pursuant to 23 Ill. Adm. Code 25.40 and 25.43; or
  - 2) another valid teaching certificate and approval issued by the State Board of Education specific to the area of responsibility (see Section 226.810 of this Part).
- c) An individual assigned as a prevocational coordinator shall:
- 1) have two years' teaching experience;
  - 2) hold either a special certificate or a high school certificate; and
  - 3) have completed at least 16 semester hours of college coursework, which shall at least include each of the areas identified in subsections (c)(3)(A) through (D) and may include one or more of the areas identified in subsections (c)(3)(E) through (I):
    - A) Survey of the exceptional child;
    - B) Characteristics of the mentally retarded student;
    - C) Characteristics of the socially and/or emotionally maladjusted student;
    - D) Vocational programming for students with disabilities;
    - E) Characteristics of other exceptionalities;
    - F) Methods course in special education;
    - G) Guidance and counseling;
    - H) Educational and psychological diagnosis;
    - I) Vocational and technical education; and
- 4) submit evidence of meeting the requirements of this subsection (c) under cover of an application form supplied by the State Board of Education.
- d) An individual assigned as a teacher coordinator shall:
- 1) hold either a special certificate endorsed for the disability area of assignment or a high school certificate with special education approval in the applicable disability area issued pursuant to Section 226.810 of this Part;
  - 2) have completed a course in vocational programming for students with disabilities;
  - 3) have at least one year's work experience outside the field of education or have completed at least one course in either guidance and counseling or vocational and technical education; and
  - 4) submit evidence of meeting the requirements of this subsection (d) under cover of an application form supplied by the State Board of Education.
- e) An individual assigned as a business manager's assistant shall hold an administrative certificate endorsed for chief school business official pursuant to 23 Ill. Adm. Code 25.344.
- f) Qualified Bilingual Specialists

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Professional staff otherwise qualified pursuant to this Section shall be considered "qualified bilingual specialists" if they meet the applicable requirements set forth in this subsection (f).

- 1) A holder of a special certificate endorsed in the area of responsibility pursuant to 23 Ill. Adm. Code 25.40 or 25.43 shall successfully complete a language examination in the non-English language of instruction and shall have completed coursework covering:
  - A) Psychological/educational assessment of students with disabilities who have limited English proficiency;
  - B) Theoretical foundations of bilingual education and English as a second language, including the study of first and second language acquisition; and
  - C) Methods and materials for teaching students of limited English proficiency or students with disabilities who have limited English proficiency.
- 2) A holder of an early childhood, elementary, or high school certificate who also holds special education approval in the area of responsibility (see Section 226.810 of this Part) shall successfully complete a language examination in the non-English language of instruction and shall have completed the coursework listed in subsections (f)(1)(A), (B), and (C) of this Section.
- 3) A holder of an early childhood, elementary, or high school certificate who also holds approval to teach bilingual education or English as a second language shall have completed coursework covering:
  - A) Methods for teaching in the special education area of assignment;
  - B) Psychological/educational assessment of students with disabilities who have limited English proficiency, or psychological diagnosis for children with all types of disabilities; and
  - C) Characteristics of students, or characteristics of students with limited English proficiency specifically, in the special education area of assignment.
- 4) A holder of a transitional bilingual certificate issued pursuant to 23 Ill. Adm. Code 25.90 and endorsed for the language of assignment shall have completed two years of successful teaching experience and have completed coursework covering:
  - A) Survey of children with all types of disabilities;
  - B) Assessment of the bilingual student, or psychological/educational assessment of the student with disabilities who has limited English proficiency;
  - C) Theoretical foundations of bilingual education and English as a second language, including the study of first and second language acquisition;
  - D) Methods for teaching in the special education area of assignment; and

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- E) Characteristics of students, or characteristics of students with limited English proficiency specifically, in the special education area of assignment.
- 5) A holder of a school service personnel certificate endorsed for guidance, school social work, or school psychology shall successfully complete an examination in the non-English language and shall have completed coursework in assessment of the bilingual student or psychological/educational assessment of the student with disabilities who has limited English proficiency.
- g) Directors and Assistant Directors of Special Education
  - 1) Each director or assistant director of special education shall hold a valid administrative certificate issued pursuant to 23 Ill. Adm. Code 25.315 and a master's degree, including 30 semester hours of coursework distributed among all the following areas:
    - A) Survey of exceptional children;
    - B) Special methods courses (3 areas of exceptionality);
    - C) Educational and psychological diagnosis and remedial techniques;
    - D) Guidance and counseling; and
    - E) Supervision of programs for exceptional children.
  - 2) Each individual who will function as a director or assistant director of special education shall submit an application for special education administrative approval on a form supplied by the State Board of Education.
  - 3) Each school district, or the cooperative entity of which it is a member, shall employ a full-time director of special education and shall submit to the State Board of Education a letter identifying the individual as the director of special education, along with the minutes of the board(s) of education approving the individual's employment in that capacity. If the individual is qualified as required, the State Board shall confirm that the individual is the State-approved director of special education for the district or cooperative entity.
  - 4) The individual employed pursuant to subsection (g)(3) of this Section shall be the chief administrative officer of the special education programs and services of the district or cooperative entity.
- h) Supervisors
  - 1) Each district or cooperative entity shall employ sufficient supervisory personnel to provide consultation to and coordination of special education services.
  - 2) Each individual performing a supervisory function shall hold a master's degree, including at least 15 semester hours of coursework distributed among all the following areas:
    - A) Survey of exceptional children;
    - B) Characteristics course(s) in the area(s) to be supervised;
    - C) Methods course(s) in the area(s) to be supervised;

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- D) Educational and psychological diagnosis and remedial techniques; and
- E) Supervision of programs for exceptional children.
- 3) Each individual performing a supervisory function shall also hold either:

- A) a valid special certificate in the area to be supervised, endorsed for supervision pursuant to 23 Ill. Adm. Code 25.322, with two years' teaching experience in that area; or
- B) a valid school service personnel certificate, two years' experience in the area to be supervised, and a valid administrative certificate; or
- C) a valid administrative certificate and either a valid special certificate endorsed for the area to be supervised or special education approval in that area.
- i) Chief Administrator of Special School
- The chief administrator of a special school shall hold an administrative certificate with a general administrative endorsement issued pursuant to 23 Ill. Adm. Code 25.344 and either:
- 1) the qualifications required under 23 Ill. Adm. Code 25.43 in at least one disability area served by the school; or
  - 2) approval issued by the State Board of Education pursuant to Section 226-810 of this Part for at least one disability area served by the school.

## j) Other Professional Personnel

Each individual employed in a professional capacity not specified in subsections (a) through (i) of this Section shall, as appropriate to his or her assignment, hold:

- 1) the school service personnel certificate endorsed as appropriate to the area of responsibility (see 23 Ill. Adm. Code 25, Subpart D); or
- 2) a valid license or permission to practice, if the individual's profession is governed by such a requirement and either no educational credential in the same or a related field is issued by the State Board of Education (e.g., for a physical therapist) or the School Code permits the individual to perform the function(s) assigned; or
- 3) a credential, regardless of title, issued by a professional association or organization in the relevant field, when no educational credential in the same or a related field is issued by the State Board of Education and no license or permission to practice is required by the State (e.g., for a music therapist or a daily living skills specialist).

## k) Noncertified Personnel

- 1) Each noncertified individual employed in a special education class, program, or service, as well as each nonemployee providing any service in the context of special education, shall function under the direct supervision of a professional staff member.
- 2) Each district shall provide its noncertified personnel with

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training experiences appropriate to the nature of their responsibilities. Such training shall be in lieu of the requirements for noncertified personnel set forth in 23 Ill. Adm. Code 1, Subpart G.

## Section 226-810 Special Education Teaching Approval

Special education approval may be issued by the State Board of Education to an individual who does not hold a special certificate or who lacks some of the qualifications for one of the endorsements enumerated in 23 Ill. Adm. Code 25.43.

- a) Special education teaching approval will be issued in the following areas:
  - 1) Educable mentally handicapped;
  - 2) Learning disabilities;
  - 3) Social/emotional disorders;
  - 4) Trainable mentally handicapped; and
  - 5) Physically handicapped.
- b) An individual who holds an early childhood, elementary, or high school certificate shall receive approval to teach in a special education area listed in subsection (a)(1) of this Section if he or she has successfully completed at least one college-level course in each of the following areas:
  - 1) Survey of exceptional children;
  - 2) Characteristics of special education students in the specific area of approval sought;
  - 3) Methods of teaching in the area of special education approval sought; and
  - 4) Psychological diagnosis for children with all types of disabilities.
- c) Except as provided in subsection (d) of this Section, an individual who wishes to receive special education teaching approval shall submit an application for a special certificate on a form supplied by the State Board of Education and shall comply with such other application procedures as the State Board may require.
  - 1) If the individual qualifies for a special certificate, the State Board shall issue one and endorse it as warranted.
  - 2) If the individual does not qualify for a special certificate, the State Board shall evaluate the application for special education approval and either issue such approval or notify the applicant of any deficiencies.
- d) The State Board shall issue early childhood special education approval to an individual who holds either an early childhood certificate or a special certificate in one of the areas of specialization enumerated at 23 Ill. Adm. Code 25.43, provided that the individual makes application for such approval on a form supplied by the State Board demonstrating that he or she has successfully completed coursework in all the following areas:



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- 1) Survey of exceptional language;
- 2) The development of language in young children;
- 3) Early childhood assessment; and
- 4) Early childhood or elementary school curriculum and organization.

e) Special education approval shall not be limited with regard to time or district of employment but shall be valid only for the special education area(s) indicated and the grade level(s) to which the individual's certificate applies.

**Section 226-820 Authorization for Assignment**

In the circumstances described in this Section, neither the qualifications required by Section 226-800 of this Part nor special education approval under Section 226-810 of this Part shall be required. When authorized pursuant to this Section, reimbursement shall be available for staff providing special education and related services.

**a) No Fully Qualified Individual Available**

1) When a district or cooperative entity demonstrates to the State Board of Education that it is unable to secure the services of an individual who holds the required credentials for a particular assignment, the State Board may authorize the assignment of another individual if the director of special education submits a written request through the regional superintendent of schools, on a form provided by the State Board, that:

- A) describes the position or assignment involved or the services to be provided and identifies the required certificate or approval;
  - B) describes the population to be served, including the number of students in each disability category represented;
  - C) describes the type and frequency of supervision and technical assistance to be provided to the individual, including the name(s) and title(s) of the supervisor and any other individual(s) who will provide technical assistance;
  - D) describes the unique training, education, experience, or other qualifications that will assist the individual in fulfilling the requirements of the position;
  - E) describes the district's or cooperative entity's efforts to locate a fully qualified individual to fill the position, including contacts with universities, regional superintendents, and the State Board of Education; and
  - F) indicates that the individual to be assigned is working toward attainment of the required certificate, endorsement, or approval for the position.
- 2) The State Board's authorization to assign such an individual shall be specific to the affected position and to the district or cooperative entity requesting the authorization and shall be limited to two years in duration.

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**b) Interns**

The State Board may also authorize the assignment of interns in school psychology, school social work, school nursing, and speech/language pathology who will work under the supervision of fully qualified professionals, subject to the requirements of this subsection (b).

1) For each intern in school psychology, school social work, or school nursing, the director of special education shall submit, on forms supplied by the State Board:

A) verification provided by an educational institution that the candidate is participating in a formal internship under its auspices; and

B) a request for authorization to assign the individual to an intern's position.

2) For each intern in speech/language pathology, the director of special education shall submit evidence that the individual holds a valid teaching certificate and has a bachelor's degree in communication disorders. The individual shall also either have completed graduate-level coursework in communication disorders or be enrolled in a program providing such coursework. The director of special education shall provide evidence that the intern will be supervised by an individual who holds a special certificate endorsed for speech and language impaired pursuant to 23 Ill. Adm. Code 25-45.

**c) No Specific Credential Required**

1) When a school district or cooperative entity needs to fill a position for which no specific certificate, endorsement, or other credential is required, the district or cooperative entity shall seek authorization from the State Board of Education to assign the individual who has been selected.

2) The director of special education shall submit a written request through the regional superintendent of schools, on a form provided by the State Board, that:

- A) describes the position or the service to be provided, why it is needed, and for how long it is expected to be needed; and
  - B) describes the training, education, experience, or other qualifications held by the individual selected that will be relevant to the unique needs of the students to be served (e.g., experience in teaching students with similar disabilities, experience in providing the specific service(s) involved).
- 3) The State Board's authorization to assign such an individual shall be limited to the period for which the service is stated to be needed and shall be specific to the affected position and to the requesting entity.

**d) Other Positions Attributed to Special Education**

A district or cooperative entity may be reimbursed for the services of other individuals who hold regular education credentials but serve special education students, e.g., a teacher who provides adaptive

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## physical education.

1) In order to claim reimbursement for the services of such individuals, the director of special education shall submit:

- A) A description of the individual's duties and an indication of the certificate required for those duties;
  - B) Information about the special education pupils to be served and the percentage of the individual's time that will be spent serving these students; and
  - C) A description of the individual's related education and experience.
- 2) The State Board's authorization of reimbursement for such individuals shall be specific to the requesting entity but shall not be limited in duration.

**Section 226-830 List of Independent Evaluators**

a) The State Board of Education shall develop a list of independent educational evaluators who hold the credentials required for the performance of the various evaluation components pursuant to Section 226.840 of this Part.

b) No person shall be included in the State Board's list unless he or she has provided in writing to the State Board the following specific information for each credential for which the Board's acknowledgment is sought:

- 1) name of license, certificate, or other credential;
  - 2) name of credentialing agency or body;
  - 3) number of certificate, license, registration, or other credential;
  - 4) date of issue; and
  - 5) period of validity.
- c) Persons wishing to be included on this list may submit the information about their credentials required under subsection (b) of this Section to the State Board at any time. The State Board shall update the list as changes may warrant and shall provide the list to school districts.

**Section 226-840 Qualifications of Evaluators**

The following list identifies the credentials required to administer each type of evaluation.

**TYPE****Academic Performance****REQUIRED QUALIFICATIONS**

Teaching certificate/approval appropriate for the age or disability of the child, or School Service Personnel Certificate endorsed for school psychology or guidance. (See Article 21 of the School Code [105

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ILCS 5/Art.21) and the State Board's rules at 23 Ill. Adm. Code 1 and 23 Ill. Adm. Code 25.)

**Adapted Physical Education**

Special Certificate endorsed for physical education with approval in adapted physical education (23 Ill. Adm. Code 25.40 and 25.43).

**Assistive Technology**

To the extent that a test is used in performing this assessment, qualification for administering the test according to the instructions provided by the test's publisher.

**Audiological**

License to practice as an Audiologist issued by the Department of Professional Regulation pursuant to the Illinois Speech-Language Pathology and Audiology Practice Act [225 ILCS 110].

**Clinical Psychological**

License issued pursuant to the Clinical Psychologist Licensing Act [225 ILCS 15].

**Cultural Background Assessment**

School Service Personnel Certificate endorsed for school psychology, school social work, or school counseling.

**Hearing Screening**

Certificate of training issued by the Department of Public Health (77 Ill. Adm. Code 675).

**Learning Processes Evaluation**

School Service Personnel Certificate endorsed for school psychology or Special Certificate endorsed for learning disabilities.

**Medical Review**

School Service Personnel Certificate endorsed for school nursing (23 Ill. Adm. Code 25.240), or license to practice medicine in all of its branches.

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## Neurological Evaluation

Licensure/registration issued by the Department of Professional Regulation pursuant to the Medical Practice Act of 1987 [225 ILCS 60].

## Occupational Therapy Evaluation

Certificate/Registration issued by the Department of Professional Regulation pursuant to the Illinois Occupational Therapy Practice Act [225 ILCS 75].

## Orientation/Mobility

Certification for orientation/mobility instruction and evaluation (Certification for Orientation and Mobility, Orientation and Mobility Division, Association for Education and Rehabilitation of the Blind and Visually Impaired, 4600 Duke Street, #430, P.O. Box 22397, Alexandria, Virginia 22304; 1984; no later amendments or editions are included).

## Physical Therapy Evaluation

Certificate/registration issued by the Department of Professional Regulation pursuant to the Illinois Physical Therapy Act [225 ILCS 90].

## Psychiatric Evaluation

Licensure/registration issued by the Department of Professional Regulation pursuant to the Medical Practice Act of 1987.

## School Psychological

School Service Personnel Certificate endorsed for school psychology.

Social Developmental Study  
(Adaptive Behavior, Cultural Background, Family History)

School Service Personnel Certificate endorsed for social work, guidance, or school psychology [23 Ill. Adm. Code 25.210, 25.220, or 25.230].

## Speech and Language Assessment

Special Certificate endorsed for speech and language impairment [23 Ill. Adm. Code 25.45].

## Vision Screening

Certificate of training issued by the Department of Public Health [77 Ill. Adm. Code 6/5].

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1) Heading of the Part: Child Care2) Code Citation: 89 Ill. Adm. Code 503) Section Numbers:  
50.230  
Proposed Action:  
Amendment4) Statutory Authority: Implementing Articles I through IX and authorized by Section 12-13 of the Illinois Public Aid Code [305 ILCS 5/Arts. I through IX and 12-13] and P.A. 91-0509.5) A Complete Description of the Subjects and Issues involved: Pursuant to provisions of P.A. 91-0509, these proposed amendments expand the criteria for non-TANF families to receive a child care subsidy while participating in education or training.6) Will this proposed rule replace an emergency rule currently in effect?  
Yes7) Does this rulemaking contain an automatic repeal date? No8) Does this proposed amendment contain incorporations by reference? No9) Are there any other amendments pending on this Part? No510) Statement of Statewide Policy Objectives (if applicable): This rulemaking does not create or expand a State mandate.11) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking: Interested persons may present their comments concerning these rules within 45 days of the date of this issue of the *Illinois Register*. All requests and comments should be submitted in writing to:

Ms. Susan Weir, Bureau Chief  
Bureau of Administrative Rules and Procedures  
Department of Human Services  
100 South Grand Avenue East  
3rd Floor Harris Bldg.  
Springfield, Illinois 62762  
(217) 785-9772

12) Initial Regulatory Flexibility Analysis:

A) Types of small businesses, small municipalities and not for profit corporations affected: None

B) Reporting, bookkeeping or other procedures required for compliance:

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None

## C) Types of professional skills necessary for compliance: None

- 13) Regulatory agenda on which this rulemaking was summarized: This rulemaking was not included in either of the two most recent regulatory agendas because: it was not anticipated by the Department when the two most recent regulatory agendas were published.

The full text of Proposed Amendments is identical to the text of the Emergency Amendments which appears in this issue of the *Illinois Register* on page **10877**.

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## 1) Heading of the Part: Closure

## 2) Code Citation: 89 Ill. Adm. Code 617

- 3) Section Numbers: Proposed Action:
- |        |         |
|--------|---------|
| 617.20 | Amended |
| 617.30 | Amended |
| 617.40 | Amended |
| 617.50 | Amended |
| 617.55 | Amended |
| 617.60 | Amended |
| 617.80 | Amended |
| 617.90 | Amended |

- 4) Statutory Authority: Implementing and authorized by Section 3(a), (b) and (k) of the Disabled Persons Rehabilitation Act (20 ILCS 2405/3(a), (b) and (k)).

- 5) A. Complete Description of the Subjects and Issues involved: This rulemaking amends this Part to make the Part consistent with the new federal amendments to the Rehabilitation Act. The most significant changes are the use of the Individualized Plan for Employment, the requirement of "full consultation" with the customer in a closure decision, the elimination of "Extended Evaluation" and the addition of a Trial Work Period, the elimination of the suitable transportation closure, and changes in the definition of successful employment.

- 6) Will this proposed amendment replace an emergency rule currently in effect? No

- 7) Does this rulemaking contain an automatic repeal date? No

- 8) Does this proposed amendment contain incorporations by reference? No

- 9) Are there any other amendments pending on this Part? No

- 10) Statement of Statewide Policy Objectives (if applicable): This rulemaking does not create or expand a State mandate.

- 11) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking: Interested persons may present their comments concerning this rulemaking within 45 days after this issue of the *Illinois Register*. All requests and comments should be submitted in writing to:

Ms. Susan Weir, Bureau Chief  
Bureau of Administrative Rules and Procedures  
Department of Human Services  
100 South Grand Avenue East



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3rd Floor Harris Bldg.  
Springfield IL 62762  
(217) 785-9772

If because of physical disability you are unable to put comments into writing, you may make them orally to the person listed above.

12) Initial Regulatory Flexibility Analysis:

- A) Types of small businesses, small municipalities and not for profit corporations affected: None
- B) Reporting, bookkeeping or other procedures required for compliance: None
- C) Types of professional skills necessary for compliance: None

13) Regulatory Agenda on which this rulemaking was summarized: July 1999

The full text of the Proposed Amendments begins on the next page:

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TITLE 89: SOCIAL SERVICES  
CHAPTER IV: DEPARTMENT OF HUMAN SERVICES  
SUBCHAPTER B: VOCATIONAL REHABILITATION

PART 617  
CLOSURE

- Section 617.10 General Applicability
- 617.20 Determination of Closure
- 617.30 Criteria for Being Determined "Rehabilitated"
- 617.40 Closure as an Unpaid Family Worker
- 617.50 Closure as a Homemaker
- 617.55 Closure in Supported Employment
- 617.60 Closure in Work Services (Sheltered Employment)
- 617.70 Closure in a Work Activity Program (Repealed)
- 617.80 Vocational Outcome at Closure
- 617.90 Certification of Ineligibility
- 617.100 Client Participation in Closure Decision (Repealed)
- 617.110 Annual Review of Ineligibility Decision

**AUTHORITY:** Implementing and authorized by Section 3(a), (b), and (k) of the Disabled Persons Rehabilitation Act [20 ILCS 2405/3(a), (b), and (k)].

**SOURCE:** Adopted at 9 Ill. Reg. 8776, effective June 10, 1985; amended at 11 Ill. Reg. 4032, effective February 18, 1987; amended at 12 Ill. Reg. 6959, effective April 1, 1988; amended at 12 Ill. Reg. 11498, effective June 22, 1988; amended at 12 Ill. Reg. 17090, effective October 11, 1988; amended at 12 Ill. Reg. 17957, effective October 24, 1988; amended at 15 Ill. Reg. 7347, effective April 26, 1991; amended at 15 Ill. Reg. 16118, effective October 24, 1991; emergency amendment at 17 Ill. Reg. 11686, effective July 1, 1993, for a maximum of 150 days; amended at 17 Ill. Reg. 20366, effective November 15, 1993; recodified from the Department of Rehabilitation Services to the Department of Human Services at 21 Ill. Reg. 9325; amended at 23 Ill. Reg. 1374, effective January 19, 1999; amended at 23 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

**Section 617.20 Determination of Closure**

Closure of an individual's case record shall be done any time in the Vocational Rehabilitation (VR) process when the counselor has determined that any of the following exist. Action required for each item is also indicated.

- a) The person has no physical or mental impairment or substantial impediment to employment (89 Ill. Adm. Code 553). This type of closure does not require an annual review, but does require opportunity for full consultation with the customer or representative about the ~~participation in~~ closure decision; notification to customer of closure, in writing and other appropriate modes of communication;

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informing the customer about the Client Assistance Program (CAP) services; provision of a description of the means by which the customer may express and seek a remedy for any dissatisfaction with the determination, including appeal procedures and appeal rights (89 Ill. Adm. Code 510.17 and completion of a Certification of Ineligibility by the counselor.

- b) After a period of ~~trial work~~ Extended Evaluation (89 Ill. Adm. Code 553.70 553-46), there is no reasonable expectation that VR services may benefit the individual in terms of a successful employment outcome. This type of closure requires: a ~~an annual~~ review upon request of the customer, within 12 months and thereafter, except as noted below; opportunity for customer participation in the closure decision; notification to customer of closure, in writing and other appropriate modes of communication; CAP services and appeal rights; an Individualized Plan for Employment (IPE) Written-Rehabilitation Program (IWPR) amendment (89 Ill. Adm. Code 567), if appropriate; and completion of a Certification of Ineligibility by the counselor. If the determination the customer cannot benefit was based on the fact the customer's medical condition is rapidly progressive or terminal, an annual review need not be conducted.

- c) The person has refused services or further services, or has failed to cooperate. This type of closure does not require an annual review, but does require opportunity for customer participation in the closure decision and written notification to the customer of the closure, CAP services, and appeal rights.

- d) The person cannot be located, has moved out of state, has died, or is otherwise unavailable for services for an extended period of time, e.g., institutionalized or incarcerated. This type of closure does not require an annual review, but does require an IPE IWPR amendment, if appropriate.

- e) The program of services has been completed in terms of a successful employment outcome and additional services are not required. This type of closure does not require an annual review, but does require opportunity for customer participation in the closure decision, written notification to customer of the closure, CAP services and appeal rights, and an IPE IWPR amendment.

- f) Employment was obtained without benefit of VR services. This type of closure does not require an annual review, but does require written notification to customer of the closure, CAP services and appeal rights, and an IPE IWPR amendment, if appropriate.

- g) The person's service needs are outside the scope of VR service as contained in 89 Ill. Adm. Code: Chapter IV, subchapter b and are more appropriately provided by another agency. This type of closure does not require an annual review, but does require opportunity for customer participation in the closure decision, notification to customer of the closure in writing and other appropriate modes of communication, CAP services and appeal rights, and an IPE IWPR amendment, if appropriate.

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- b) The person did not meet the order of selection criteria (89 Ill. Adm. Code 553.140) and did not express an interest in being placed on a waiting list for a later offer of rehabilitation services. The person must have been eligible, or presumable eligible, for services if the order of selection criteria had not been applied. This type of closure does not require an annual review, but does require opportunity for customer participation in the closure decision, written notification to customer of the closure, CAP services and appeal rights.

- \*) ~~the provision of--suitable--transportation--for--the--acceptance--or maintenance-of-employment--was--either--not--feasible--(e.g.,--too--costly for--the--customer--to--afford--or--not--available--this--type-of--closure does--not--require--an--annual--review--but--does--require--opportunity--for customer--participation--in--the--closure--decision--written--notification to--customer--of--the--closure--in--writing--or--other--appropriate--mode--of communication--CAP--services--and--appeal--rights--and--an--IPE--amendment if--appropriate)~~

(Source: Amended at 23 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## Section 617.30 Criteria for Being Determined "Rehabilitated"

A determination that the customer has been rehabilitated must meet the following criteria:

- a) the counselor provided guidance and counseling;
- b) VR services which were necessary and consistent with the customer's goals and objectives in accordance with the Individualized Plan for Employment (IPE) Written-Rehabilitation Program (IWPR) were provided;
- c) the customer has attained a successful employment outcome, i.e., entering or retaining full-time competitive employment or, if appropriate, part-time competitive employment in the integrated labor market; satisfying the vocational outcome of supported employment; or satisfying any other vocational outcome the Secretary of the Federal Department of Education may determine to be appropriate and has maintained such for at least 90 calendar days. A rehabilitation counselor/instructor may maintain a case as long as necessary in excess of the 90 days to ensure a successful employment outcome for the customer. A determination of suitable employment cannot be made until completion of 90 days of employment. Suitable employment is indicated when all of the following are present:

- 1) the customer and employer are each satisfied as evidenced by the customer's continued employment and as expressed by the customer at the time of customer participation in the closure decision (Section 617.100);
- 2) the customer is maintaining adequate interpersonal relationships and acceptable behavior in the job environment as evidenced by the customer's continued employment and as expressed by the

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customer at the time of customer participation in the closure decision (Section 617.400):

- 3) the employment outcome is consistent with the customer's own unique strengths, resources, priorities, concerns, abilities, capabilities, career interests, and informed choices as documented in the Assessment of Rehabilitation Needs (89 Ill. Adm. Code 553.100). If the occupation is different from than the customer's identified employment outcome long-term goal, the customer must be advised of the difference, with documentation in this difference and the customer's IPE must be amended in ~~an~~ an ~~amendment-written~~ (89 Ill. Adm. Code 572.80):
- 4) the customer possesses acceptable skills to perform or continue the work satisfactorily as evidenced by the customer's continued employment;
- 5) the employment is regular, reasonably permanent (based upon the employment outcome goal established in the customer's IPE ~~WRP~~ (89 Ill. Adm. Code 572)), and the customer receives a wage and level of benefits paid by the employer for the same or similar work performed by individuals who are not disabled; and
- 6) the employment and working conditions will not aggravate the customer's disability and the customer's disability in the job situation will not jeopardize the health or safety of the customer him/herself or others based upon information obtained during the Comprehensive Assessment of Rehabilitation Needs (89 Ill. Adm. Code 553.100) and the counselor's knowledge of the job description and requirements.

(Source: Amended at 23 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 617.40 Closure as an Unpaid Family Worker**

To be considered a rehabilitation closure as an unpaid family worker, in addition to the criteria contained in Section 617.30, the VR services that were provided must have related directly to the customer's client's performing work activities required in the particular business.

(Source: Amended at 23 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 617.50 Closure as a Homemaker**

To be considered a rehabilitation closure as a homemaker, in addition to the criteria contained in Section 617.30, the VR services that were provided must have related directly to the customer's client's performing or supervising housework required in the home.

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(Source: Amended at 23 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 617.55 Closure in Supported Employment**

- a) To be considered a rehabilitation closure in supported employment, in addition to the criteria contained in Section 617.30, the supported employment must be competitive work in an integrated work setting (34 CFR 363.5(b)(30)) with compensation based on a rate at least equal to the minimum wage, with applicable benefits with ~~extended~~ extended services.
- b) The customer, DHS-QRS and the service provider shall develop an extended service plan which contains a description of extended services to be provided, the identity of the State, federal or private non-profit programs that will provide the services, the customer's comments on the extended service plan, and a date for review of the plan by customer and the counselor. "Extended services" are those services necessary to support and maintain an individual following the termination of time-limited support services as specified on the customer's IPE ~~WRP~~ (89 Ill. Adm. Code 572). Time-limited support services shall be provided for no longer than 18 months from initial date of placement unless special circumstances exist and the customer and counselor agree extension of this time period is necessary for the customer to achieve his/her employment objective. Extended services shall include job-related skills training provided at least twice monthly on the worksite. If the individual has a diagnosis of mental illness, the contacts may be for any job-related reason off the worksite.
- c) For the purposes of this Section, "customer" shall also include, as appropriate, a parent, family member, guardian, advocate or duly authorized representative.

(Source: Amended at 23 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 617.60 Closure in Work Services (Sheltered Employment)**

- a) To be considered a rehabilitation closure in work services (sheltered employment) (a Community rehabilitation work program where individuals are paid commensurate wages based on prevailing wage in the community and applicable benefits) ~~is not for-profit-work-site paying minimum-or-below-minimum-wages-for-work-of-a-non-competitive nature~~, in addition to the criteria contained in Section 617.30, the customer client must be working in a facility approved in accordance with 89 Ill. Adm. Code 530.50, and earn at least 25% of current minimum wage ~~at-or-below-minimum-wage-as-authorized-by-a-certificate from-the-HHS-Department-of-Labor~~; and be offered at least 20 hours of paid employment per week per pay period. ~~These conditions must be documented in the case file.~~

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b) Further, an annual review of this closure must be performed to assess the customer's client's ability to engage in competitive employment. This review and reevaluation of the customer's status must be done for 2 years after the achievement of a work services outcome and thereafter if requested by the customer or, if appropriate, the customer's representative. If it is determined, due to increased work skills and/or change in the customer's client's condition, he/she can be expected to engage in competitive employment, a new case will be opened and the customer client will be provided services, as appropriate, to assist in the attainment of a successful employment outcome in competitive employment.

(Source: Amended at 23 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.)

Section 617.80 Vocational Outcome at Closure

The vocational outcome at time of closure must be consistent with the original or amended employment goal unless written justification for the change exists in the case file and has been changed through an amendment to the customer's client's-IVRP (89 Ill. Adm. Code 572.80).

(Source: Amended at 23 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.)

Section 617.90 Certification of Ineligibility

Any time an applicant or recipient of VR services is determined not to be eligible ineligible (89 Ill. Adm. Code 553.30 559-90), a certification of ineligibility must be completed which indicates the reason for the ineligibility determination.

(Source: Amended at 23 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.)

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1) Heading of the Part: Standards for Award of Grants: School Construction Program

2) Code Citation: 71 Ill. Adm. Code 40

3) Section Numbers: 40.130  
Adopted Action: Amendment

4) Statutory Authority: Implementing the Capital Development Board Act [20 ILCS 3105] and authorized by Section 5-55 of that Act, and the School Construction Law [105 ILCS 230].

5) Effective date of Amendment: August 20, 1999

6) Does this rulemaking contain an automatic repeal date? No

7) Does this amendment contain incorporations by reference? No

8) A copy of the adopted amendment, including any material incorporated by reference, is on file in the agency's principal office and is available for public inspection.

9) Notice of Proposal Published in Illinois Register: May 28, 1999; 23 Ill. Reg. 6196.

10) Has JCAR issued a Statement of Objections to this amendment? No

11) Difference between proposal and final version: None

12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreement letter issued by JCAR? Yes

13) Will this amendment replace an emergency amendment currently in effect? Yes

14) Are there any amendments pending on this Part? No

15) Summary and Purpose of Amendment: To clarify that the estimate given by CDB (Recognized Project Cost) establishes a "not to exceed" amount that will be proportionately reduced if the bid prices for the project are less than CDB's estimate. The rulemaking also changes the various components of the Program Statement.

16) Information and questions regarding this adopted amendment shall be directed to:  
Frederick W. Hahn, Chief Counsel  
Capital Development Board  
3rd Floor, Wm. G. Stratton Bldg.



CAPITAL DEVELOPMENT BOARD  
NOTICE OF ADOPTED AMENDMENTS

Springfield, Illinois 62706 217/782-0700  
The full text of the adopted amendment begins on the next page:

CAPITAL DEVELOPMENT BOARD  
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TITLE 71: PUBLIC BUILDINGS, FACILITIES AND REAL PROPERTY  
CHAPTER 1: CAPITAL DEVELOPMENT BOARD  
SUBCHAPTER a: RULES

PART 40  
STANDARDS FOR AWARD OF GRANTS:  
SCHOOL CONSTRUCTION  
PROGRAM

Section	Definitions
40.100	General
40.110	Planning Assistance Grants (Repealed)
40.120	Construction Grants
40.130	Debt Service Grants (Repealed)
40.140	

AUTHORITY: Implementing the Capital Development Board Act [20 ILCS 3105] and authorized by Section 5-55 of that Act and the School Construction Law [105 ILCS 230].

SOURCE: Adopted at 2 Ill. Reg. 30, p. 140, effective July 27, 1978; amended at 4 Ill. Reg. 9, p. 233, effective February 14, 1980; amended at 5 Ill. Reg. 1890, effective February 17, 1981; amended and codified at 8 Ill. Reg. 20342, effective October 1, 1984; amended at 9 Ill. Reg. 17345, effective October 29, 1985; amended at 13 Ill. Reg. 6973, effective April 21, 1989; amended at 20 Ill. Reg. 15244, effective November 15, 1996; emergency amendment at 22 Ill. Reg. 2597, effective January 13, 1998, for a maximum of 150 days; amended at 22 Ill. Reg. 9518, effective May 21, 1998, emergency amendment at 23 Ill. Reg. 6521, effective May 12, 1999, for a maximum of 150 days; amended at 23 Ill. Reg. 10788, effective April 20, 1999.

Section 40.130 Construction Grants

Prior to the award of a construction grant, school districts shall meet the following requirements:

- a) Program Statements
  - 1) Program Statements must be submitted to the Board as part of the school district's Application for Construction Grant Entitlement for proposed facilities and sites requiring SCP funding. Program Statements must conform to the SCP Educational Facilities Program Statement Guidelines as developed by the Board and which will address, but not be limited to, the following:
    - 1) Project Description and Rationale Project-Rationale
    - 2) Occupant Capacity Education-Plan
      - A) Curriculum-Plan
      - B) Instruction-method
      - C) Support-Plans
    - 3) Site Analysis Description-of-Activity-Areas

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- 4) Project Design General-Building-Considerations
- 5) Funding Sources and Cost Estimates Site Analysis
- 6) Time Schedule of Major Events
- 7) Cost-Estimates-and-Funding-Sources

## b) Prohibited Uses

Program statements shall not include any on-going operational costs or any construction projects for which the General Assembly and the Governor have approved specifically designated funds.

## c) Standards for School Site Selection and Approval

- 1) The local school board shall select the sites for all new projects subject to the determination of the Board that the proposed site meets all minimum engineering and construction standards or requirements.

## 2) Suitability for Development and Construction

A) The site must be free of physical structures, topographical features or subsurface physical conditions that would preclude necessary construction, present insurmountable obstacles to safety or normal utilization, shorten building life, cause excessive delays in project completion, or cause costs to exceed the funds available. "Necessary construction" shall include but not necessarily be limited to: buildings, utility lines, storm water disposal arrangements and paving. The local district shall provide a report, acceptable to the Board, on soil conditions based on the removal of soil for testing. The cost to the local school district of the soil test and report of that test shall be considered as a credit to the local share of the recognized project cost if the site is approved and a grant award is made.

- B) The site must not be subject to existing or foreseeable, harmful or disruptive environmental hazards and nuisances. Such hazards and nuisances may include, but are not necessarily limited to: excessive dust, smoke, noise, odors, air pollutants, soil pollutants, floods, ground water incursions, vibrations, explosions, and electrical discharges. Site acquisition shall be subject to the Farmland Preservation Act [505 ILCS 75], Interagency Wetland Policy Act of 1989 [20 ILCS 830], Illinois State Agency Archaeological and Paleontological Resources Protection Act [20 ILCS 3435] and the Illinois Endangered Species Protection Act [520 ILCS 10], as may be applicable.

## 3) Availability of Site

- A) The local district shall have a period of 150 days from the time of grant award to acquire title to the site, or rights of use and exclusion sufficient to carry out the purposes and programs of the school. Such time period may be extended for 60 days by the Executive Director. Any further

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extension must be approved by the Board. Extensions will be granted in those cases in which there is a reasonable expectation that the district will be able to acquire the site within the period of the extension and the delay has been occasioned by a condition beyond the control of the district, such as a delay in acquiring a title commitment.

- B) A grant will not be awarded until the Board has had a reasonable opportunity to enter upon the site, inspect it in detail, and conduct whatever site tests are deemed necessary to establish the suitability of the site for school purposes.

- C) The Board will not approve a site unless its development and use for the proposed school is in compliance with applicable laws, or unless action has been taken to bring variation of same into compliance.

- D) When street vacations, utility relocations, or such action will be required prior to start of construction, the local district must present documentation that such actions will be approved by the responsible local governmental units before the Board will approve the site.

## 4) Site Size and Configuration

- A) The proposed site must contain usable space sufficient in size and of regular configuration so as to accommodate the school's on-site program as well as to accommodate ancillary functions that are better served on-site than off-site, such as parking, bus loading and unloading, casual student assembly and play, and pedestrian movement between different points on the site.

- B) The school's on-site program shall be defined to include the school's instructional program and any other activities and events the applicant school district plans to conduct on the site. The applicant may tailor its on-site program to fit the site proposed. Determination of the adequacy of the site's space in terms of the number of students shall be based on the design capacity of the school building.

## C) Space for Buildings

In addition to those portions of the site required for other purposes, there must be a portion or portions of the site that are of such size, shape and physical quality that they are sufficient to accommodate the buildings that would be required by the maximum design enrollment of the school. This "building reserve" must be at least sufficient in ground area to provide for gross floor space, as set forth in the section on space standards for new construction, subsection (c)(4)(D) of this section. For facilities with more than one floor the "building reserve" must be at least sufficient in ground area to provide for one-half the gross floor space.

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- D) Non-Building Space
- i) At a minimum, the site must provide amounts of space (in addition to that reserved for buildings to meet "Special Requirements" as defined in subsection (c)(4)(E) of this Section of a shape, character, and location that the site can readily be improved to provide areas suitable for physical education and recreation, any planned accommodation of vehicles, and the accommodation of outdoor access, circulation, and evacuation in accordance with CDB's List of Eligible Capital Infrastructure Program Expenditures for Construction of New School Facilities (see subsection (c)(7), "List of Eligible Expenditures").
- ii) For additions to existing schools, the addition should not be planned on existing open space and/or playground area of existing schools, unless it can be demonstrated that the construction of the addition will not reduce the amount of space necessary to fulfill the program and provide adequate recreational space.
- E) Special Requirements
- Irrespective of required minimums, the site must be of sufficient size to provide for the following needs as indicated:
- i) Space for Outdoor On-Site Program
- There must be a portion or portions of the site, in addition to those reserved for other purposes, that are of such size, shape and physical character that they can be readily improved to accommodate the safe conduct of the outdoor portions of the on-site school program. The site must permit the safe conduct of a physical education program that meets district standards, taking into account the varying physical capacities of students, types and amounts of activities in the physical education program, and the daily and yearly time schedule of the school.
- ii) Accommodation of Vehicles
- There must be portions of the site, in addition to those necessary for other purposes, that are of such size, shape, physical quality and location that they can provide spaces for vehicles as indicated below without contravening local zoning ordinances: safe loading and unloading areas for school buses, where areas are necessary to the safety of students from street traffic; secure and convenient parking spaces for staff, visitors, and students in conformance with district policies; and safe accommodation of delivery and service vehicles involved in serving the school.

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- iii) Access, Circulation, Evacuation Assembly
- There must be portions of the site of such size, shape, physical quality and location that they can be improved to provide: unobstructed exterior avenues of escape from the exits of all proposed buildings and the areas adjacent to buildings in the event that evacuation is necessary; safe and convenient circulation by students between and among the building(s) and outdoor activity areas of the site; safe accommodation for the unsupervised school assembly of students and their pastimes before school, after school, at lunch breaks and at recesses; safe accommodation of the outdoor assemblies of students and spectators occasioned by school-sponsored spectator events to be held on the site.
- F) Variance of Site Size and Configuration
- The Board will approve a proposed site which does not meet the minimum requirements of this subsection (c)(4) when all the following criteria have been met:
- i) The local school board petitions the State Board of Education and the Board for a variance from the minimum requirements of this subsection (c)(4) stating with specificity the reasons for such variance.
- ii) The State Board of Education certifies to the Board that the variance complies with all requirements of the School Code and rules of the State Board of Education (23 Ill. Adm. Code 151).
- 5) Utilities and Services
- A) Water Supply
- Water must be available at the site in sufficient volume and delivery rates and of appropriate quality to serve the firefighting needs of the proposed school as well as to accommodate other forms of water consumption.
- B) Sanitary Sewage Disposal
- The location or character of the site must not prevent the disposal of sanitary sewage from the school.
- C) Storm Water Disposal
- The location or character of the site must not prevent the disposal of storm water from the school.
- D) Electric, Power, Telephone, Gas
- The site must present no obstacles to the provision of electric power, telephone services, and whatever gas service the school may require at the point in the construction process when utility hook-ups are made.
- E) Solid Waste Management Systems
- Solid waste management services must be available to the site.
- 6) Architect-Engineer Selection

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The selection of an architect-engineer shall be in accordance with the Local Government Professional Services Selection Act [50 ILCS 510].

## 7) List of Eligible Expenditures:

- A) CDB will participate in the funding of academic facilities for all programs approved by the State Board of Education.
- B) CDB's participation in the funding of administrative facilities is limited to that space required for the administration of the educational and support program of the school. CDB will not participate in funding administrative facilities intended for district administration.
- C) CDB will not fund facilities intended for commercial use by profit making organizations. This is not meant to exclude facilities to be operated by non-profit organizations such as student groups, PTAs, etc.
- D) Although CDB encourages development of facilities intended for joint use by school and community, CDB's participation in the funding of facilities intended for joint use by school and community is limited to those items required to meet the needs of the school's educational and support programs.
- E) CDB will not participate in funding facilities designed exclusively for interscholastic activities. For example, although CDB will fund locker facilities in sufficient numbers to provide for the physical education program needs of a school's own students, CDB will not fund separate locker facilities for the exclusive use of visiting school teams.
- F) Off-site improvements are defined as any improvements outside of the property line. Off-site improvements are not recognized as eligible project costs except under exceptional circumstances and only in those cases where the off-site improvements are necessary to the functional operation of a school facility. The following specific policies apply to off-site improvements:
  - i) Off-site improvements that exceed the requirements needed for the project are ineligible project costs. For example, if a larger water main is desired by the locality than is needed for the school project itself, CDB will not participate in any cost attributable to the increased size of the main.
  - ii) The district must provide certification that local and/or federal funding sources are not available to the district or any other public body for off-site improvements before CDB will consider participation in their funding.
  - iii) CDB's participation in funding off-site improvements is only permitted if the off-site property or interest

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- in the property, such as an easement or leasehold, is owned by a public body.
- iv) Prior to grant award, as part of the pre-grant analysis, CDB will perform a cost-benefit analysis regarding the implications of off-site improvements for alternative sites. In evaluating need for off-site improvements, CDB will consider trade-offs among factors such as cost of off-site improvements, cost of site, and desirability of site location. For example, site acquisition cost plus major off-site improvements cost may still be less for one site than for another site requiring only minor off-site improvements. In such special cases, a site requiring major off-site improvements could be preferred. However, the specific policies in subsections (c)(7)(P)(i), (ii) and (iii) still apply.

- G) On-site improvements may be defined as any improvements outside the building's 5-foot line but inside the property line of the site. CDB's participation in funding on-site improvements is limited to those minimum requirements that are necessary to making the site functionally operational.

- H) CDB will evaluate space types of a sophisticated nature that support specialized activities in an elementary, middle/junior high school or high school. CDB will identify facilities of this type. Such justification must be based on programmatic need. Such justification to obtain the support of CDB must have the support and concurrence of the State Board of Education.

- I) CDB will participate in the funding of vocational/technical facilities for all programs approved by the State Board of Education.

## 8) State and Local Financial Participation in School Construction Projects

- A) Determination of Recognized Project Cost
  - i) Recognized project cost shall be based upon calculations in accordance with the list of Eligible Expenditures (see subsection (c)(7)) and shall include unit cost (\$/sq.ft.) as follows: buildings constructed to the five foot line, design and construction contingencies, building fixed equipment; plus additional associated costs as deemed appropriate by the Board in consultation with local school districts as follows: site improvements including related A/E fees and reimbursements, land acquisition and associated legal fees for the project site acquired, movable equipment, and utility service lines, both on-site and off-site, and special foundation construction and related A/E fees deemed



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necessary as a result of unusual sub-surface soil conditions.

- ii) The recognized project costs initially calculated by CDB will establish the maximum acceptable cost of the eligible expenditures. If the bid price received by the district from the various contractors for the eligible expenditures is less than this initial calculation, the recognized project cost will be reduced to equal the bid price.

- iii) The Board shall establish and include in the List of Eligible Expenditures (see subsection (c)(7)) unit cost limitations for elementary, secondary and vocational school construction based upon periodic review and revision of maximum cost per gross square foot allowances.

## B) Project Standards for New Construction and Additions

- i) General  
CDB shall establish detailed project standards including space and capacity standards in the List of Eligible Expenditures (see subsection (c)(7)). New schools with adequate space for all necessary instructional and ancillary activities require more space per students than additions to existing schools. Different space standards are required to accommodate different grade levels, i.e., Pre-K-6, 7-9, and 9-12. Economies of scale in terms of space per student can be anticipated for larger schools.

- ii) Square Footage  
The following maximum standards are established for the determination of the State share of the recognized project cost in connection with a construction grant:

Square Foot Per Student

**ELEMENTARY (Pre-K-6)**

Gross square feet	100
per student	82
per additional student beyond 240	

**MIDDLE/JUNIOR HIGH SCHOOL (7-9)**

Gross square feet	120
per student	100
per additional student beyond 400	

**HIGH SCHOOL (9-12)**

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Gross square feet  
per student

	140
per additional student beyond 600	110

## C) Remodeling or Rehabilitation

The recognized project cost for remodeling/ rehabilitation projects must be developed on an individual basis with space per student not to exceed standards set for construction as set forth in subsection (c)(7)(B), and unit costs not to exceed standards for new construction as established from time to time by the Board.

## D) Premises for Space Standards

- i) All necessary types of space shall be included for freestanding schools.  
ii) An average space-per-student can be derived from space type need by level: elementary, middle/junior high and high school.  
iii) Space needs for additions to existing schools may be less than needs for freestanding schools.  
iv) A building efficiency (net assignable space to total space) of 65% is the acceptable minimum.  
v) Unit costs (\$/sq.ft.) used for determining the recognized project cost, including A/E design fees, building construction to the five foot line, fixed equipment, associated legal fees and a contingency shall be no greater than those unit costs established from time to time by the Board. Said unit costs are determined as needed and are established by the Board and included in the List of Eligible Expenditures (see subsection (c)(7)). In establishing unit costs the Board members shall be guided by current costs within the construction industry and the goal of receiving fair value for public funds expended.

- E) Limits on SCP Participation and Site Cost  
Districts will not receive Board assistance or credit for acreages beyond the following maximums:

Elementary (Pre-K-6)	5 acres plus 1 acre per 100 students.
Middle/Junior High (7-9)	15 acres plus 1 acre per 100 students.

High School (9-12) - 20 acres plus 1 acre per 100 students.

- F) The State and local share of the recognized project cost shall be computed by multiplying the recognized project cost by the Grant Index as defined by the School Construction Law and determined by the State Board of Education. Local districts must have access to the local share of the recognized project cost within 90 days after the grant award by the Board. Such period may be extended by the Executive Director for a maximum period of 30 days if the district demonstrates that appropriate steps have been taken to

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obtain the district's share of the recognized project cost and that an additional 30 days is necessary to complete the process. Local school districts are urged to begin referendum proceedings upon grant entitlement by the State Board of Education.

- G) The local share of the recognized project cost may be placed in a local trust account pursuant to 71 Ill. Adm. Code 30.
- H) School districts may add to a project cost beyond the recognized project cost with local funds. Funds for such project supplements may be deposited in local trust accounts.
- I) All enrichment project costs that are not included in the recognized project cost and designated as ineligible expenditures by the Capital Development Board will be paid by the local district.

(Source: Amended at 23 Ill. Reg. 10788, effective

AUG 20 1999)

## DEPARTMENT OF HUMAN SERVICES

## NOTICE OF ADOPTED AMENDMENTS

- 1) Heading of the Part: Administrative Law Judges
- 2) Code Citation: 2 Ill. Adm. Code 1027
- 3) Section Numbers: Adopted Action:  
1027.10 Amended
- 4) Statutory Authority: Implementing Section 5-15 of the Illinois Administrative Procedure Act [5 ILCS 100/5-15] and authorized by Section 5-104 of the Mental Health and Developmental Disabilities Code [405 ILCS 5/5-104], Section 5 of the Department of Mental Health and Developmental Disabilities Act [20 ILCS 1705/5] and Section 10-20 of the Illinois Administrative Procedure Act [20 ILCS 1705/10-20].
- 5) Effective Date of Amendments: August 23, 1999
- 6) Does this rulemaking contain an automatic repeal date? No
- 7) Does this amendment contain incorporations by reference? No
- 8) A copy of the adopted amendment, including any material incorporated by reference, is on file in the agency's principal office and is available for public inspection.
- 9) Notice of Proposal Published in Illinois Register: April 16, 1999, 23 Ill. Reg. 4349
- 10) Has JCAR Issued a Statement of Objections to these amendments? No
- 11) Difference between proposal and final version: None
- 12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreement letter issued by JCAR? Yes
- 13) Will this amendment replace an emergency amendment currently in effect? Yes
- 14) Are there any amendments pending on this Part: No
- 15) Summary and Purpose of Amendments: This rulemaking is part of the Department of Human Services effort to consolidate all hearings covered by the Illinois Administrative Procedure Act. This rulemaking amends Part 1027 to eliminate references within the current rule to Parts now covered by 89 Ill. Adm. Code 508. Part 1027 still applies to hearings held within the office of Mental Health and the Office of Developmental Disabilities.
- 16) Information and questions regarding this adopted amendment shall be directed to:

DEPARTMENT OF HUMAN SERVICES  
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Ms. Susan Weir, Chief  
Bureau of Administrative Rules and Procedures  
Department of Human Services  
100 South Grand Avenue East  
2nd Floor, Harris Bldg. 62762  
Springfield, Illinois 62762  
217/785-9772  
FAX: 217/557-1547

The full text of the adopted amendments begins on the next page:

DEPARTMENT OF HUMAN SERVICES  
NOTICE OF ADOPTED AMENDMENTS

## TITLE 2: GOVERNMENTAL ORGANIZATIONS

## SUBTITLE D: CODE DEPARTMENTS

## CHAPTER XIV: DEPARTMENT OF MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES

## PART 1027

## ADMINISTRATIVE LAW JUDGES

## Section

## 1027.10 Qualifications

**AUTHORITY:** Implementing Section 5-15 of the Illinois Administrative Procedure Act [5 ILCS 100/5-15] and authorized by Section 5-104 of the Mental Health and Developmental Disabilities Code [405 ILCS 5/5-104], Section 5 of the Department of Mental Health and Developmental Disabilities Act [20 ILCS 1705/5] and Section 10-20 of the Illinois Administrative Procedure Act [5 ILCS 100/10-20].

**SOURCE:** Adopted at 16 Ill. Reg. 11445, effective June 30, 1992; transferred from the Department of Mental Health and Developmental Disabilities to the Department of Human Services by PA 89-507; emergency amendment at 23 Ill. Reg. 4485, effective April 2, 1999, for a maximum of 150 days; amended at 23 Ill. Reg. ~~10800~~ effective ~~AUG 20 1999~~.

## Section 1027.10 Qualifications

**Administrative All-administrative** law judges conducting hearings in accordance with the Department's rules at 59 Ill. Adm. Code 103, 106, ~~1137-1137-1137~~ 120 or 132 shall have the following minimum qualifications:

- a) Five years experience in government management or in the provisions of mental health or developmental disabilities services. The five years may be any combination of both types of experience; or
- b) Successful completion of a course of study on administrative law at the undergraduate, graduate or postgraduate level and two or more years experience in government management or in the provision of mental health or developmental disabilities services; or
- c) Six months to one year's experience as a full-time administrative law judge or the equivalent part-time experience and one or more years experience in government management or in the provision of mental health or developmental disabilities services; or
- d) One or more years experience as a full-time administrative law judge or the equivalent part-time experience; or
- e) A law degree from an accredited law school; or
- f) A current license to practice law in the State of Illinois.

(Source: Amended at 23 Ill. Reg. ~~10800~~ effective ~~AUG 20 1999~~ )

## DEPARTMENT OF HUMAN SERVICES

## NOTICE OF ADOPTED AMENDMENTS

- 1) Heading of the Part: Alcoholism and Substance Abuse Treatment and Intervention Licenses
- 2) Code Citation: 77 Ill. Adm. Code 2060
- 3) Section Numbers: Adopted Action:  
2060.341 Amended
- 4) Statutory Authority: Implementing and authorized by the Illinois Vehicle Code [625 ILCS 5] and the Alcoholism and Other Drug Dependency Act [20 ILCS 301].
- 5) Effective Date of Amendments: August 23, 1999
- 6) Does this rulemaking contain an automatic repeal date? No
- 7) Does this amendment contain incorporations by reference? No
- 8) A copy of the adopted amendment, including any material incorporated by reference, is on file in the agency's principal office and is available for public inspection.
- 9) Notice of Proposal Published in Illinois Register: April 16, 1999, 23 Ill. Reg. 4351
- 10) Has JCAR Issued a Statement of Objections to this amendment? No
- 11) Difference between proposal and final version:  
In 2060.341 (a), changed "Section" to "Section 45-20" and added "45-20" in the cite after the slash.
- 12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreement letter issued by JCAR? Yes
- 13) Will this amendment replace an emergency amendment currently in effect? Yes
- 14) Are there any amendments pending on this Part: No
- 15) Summary and Purpose of Amendment: This rulemaking is part of the Department of Human Services effort to consolidate all hearings covered by the Illinois Administrative Procedure Act. The rulemaking is being partially replaced by 89 Ill. Adm. Code 506. Some requirements specific to this program are being maintained.
- 16) Information and questions regarding this adopted amendment shall be directed to:

## DEPARTMENT OF HUMAN SERVICES

## NOTICE OF ADOPTED AMENDMENTS

Ms. Susan Weir, Chief  
Bureau of Administrative Rules and Procedures  
Department of Human Services  
100 South Grand Avenue East  
3rd Floor, Harris Bldg., 62762  
Springfield, Illinois 62762  
217/785-9772  
FAX: 217/557-1547

The full text of the adopted amendment begins on the next page:



## DEPARTMENT OF HUMAN SERVICES

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TITLE 77: PUBLIC HEALTH  
CHAPTER X: DEPARTMENT OF HUMAN SERVICES  
SUBCHAPTER 6: LICENSURE

## PART 2060

ALCOHOLISM AND SUBSTANCE ABUSE TREATMENT  
AND INTERVENTION LICENSES

## SUBPART A: GENERAL REQUIREMENTS

Section  
2060.101 Applicability  
2060.103 Incorporation by Reference and Definitions

## SUBPART B: LICENSURE REQUIREMENTS

Section  
2060.201 Types of Licenses  
2060.203 Off-Site Services  
2060.205 Unlicensed Practice  
2060.207 Organization Representative  
2060.209 Ownership Disclosure  
2060.211 License Application Forms  
2060.213 License Application Fees  
2060.215 Period of Licensure  
2060.217 License Processing/Review Requirements  
2060.219 Renewal of Licensure  
2060.221 Change of Ownership/Management  
2060.223 Dissolution of the Corporation  
2060.225 Relocation of Facility  
2060.227 License Certificate Requirements

## SUBPART C: REQUIREMENTS - ALL LICENSES

Section  
2060.301 Federal, State and Local Regulations and Court Rules  
2060.303 Rule Exception Request Process  
2060.305 Facility Requirements  
2060.307 Service Termination/Record Retention  
2060.309 Professional Staff Qualifications  
2060.311 Staff Training Requirements  
2060.313 Personnel Requirements and Procedures  
2060.315 Quality Improvement  
2060.317 Service Fees  
2060.319 Confidentiality - Patient Information  
2060.321 Confidentiality - HIV Antibody/AIDS Status  
2060.323 Patient Rights  
2060.325 Patient/Client Records

## DEPARTMENT OF HUMAN SERVICES

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2060.331 Incident and Significant Incident Reporting  
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2060.503 DUI Evaluation  
2060.505 DUI Risk Education  
2060.507 Designated Program  
2060.509 Recovery Homes

AUTHORITY: Implementing and authorized by the Illinois Vehicle Code [625 ILCS 5] and the Alcoholism and Other Drug Dependency Act [20 ILCS 301].

SOURCE: Adopted at 20 Ill. Reg. 13519, effective October 3, 1996; recodified from Department of Alcoholism and Substance Abuse to Department of Human Services at 21 Ill. Reg. 9319; emergency amendment at 23 Ill. Reg. 4489, effective April 2, 1999, for a maximum of 150 days; amended at 23 Ill. Reg. 10803, effective Alc 23 1999.

SUBPART C: REQUIREMENTS - ALL LICENSES

Section 2060.341 License Hearings

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- a) Hearings conducted pursuant to Sections 45-20 and 45-25 [20 ILCS 301/45-20 and 45-25] of the Act shall follow the procedures set forth in 89 Ill. Adm. Code 508 and this Section.
- b) Any organization receiving a "Notice of an Opportunity for Hearing" shall file a request for such hearing within 30 calendar days after the date of notice or the hearing rights afforded under this Act shall be deemed waived.
- c) Both the burden of going forward with evidence and the burden of proof rest with the party requesting a hearing. The burden of proof is to show by preponderance of the evidence that the Department's decision is contrary to the evidence on the record when taken as a whole.
- d) Hearing Officer Report
  - 1) Within 30 calendar days after the conclusion of the hearing, the hearing officer shall deliver a report of the hearing to the Secretary.
  - 2) All exhibits, pleadings, documents, or other material made a part of the record will accompany the report.
  - 3) The report will summarize the testimony presented at the hearing and the hearing officer's opinion about the reliability of the witnesses.
- e) Applicability
 

this Section shall apply to all hearings conducted by the Department pursuant to Section 45-25 of the Act in case of a conflict between the provisions of this Section and the Illinois Administrative Procedure Act--15 ILCS 1001--the provisions of the Illinois Administrative Procedure Act shall apply.
- f) Parties
  - 1) The parties to a hearing are:
    - a) the Department; and
    - b) the applicant or license holder who is afforded an opportunity for hearing or who requests a hearing in accordance with requirements specified in this Section.
  - 2) A hearing officer shall conduct the proceeding.
  - 3) The hearing officer shall be an attorney licensed to practice law in the State of Illinois or the Secretary with the mutual consent of both parties.
- g) Representation
  - 1) A party may be represented by an attorney at law who is licensed to practice law in the State of Illinois and who has filed an appearance with the Department.
  - 2) Each party to a proceeding shall inform the Department of the address to which notices or other documents should be directed if different from the address indicated in Department records.
- h) Form of Papers
  - 1) All papers filed in any proceeding shall be typewritten or printed on paper which does not exceed 8 1/2 by 11 inches, with

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- a) margins not less than one inch wide; typing or printing shall be on one side of the paper only;
  - 2) All papers filed with the Department shall be filed in triplicate;
  - f) Pleadings
    - 1) Pleadings shall contain the address of the party filing the pleading or the address of his or her attorney;
    - 2) All pleadings filed with the Department shall be filed in triplicate.
    - 3) The Department's "Notice of an Opportunity for Hearing" shall contain:
      - A) a statement of the nature of the hearing;
      - B) a statement of the legal authority and jurisdiction under which the hearing is to be held;
      - C) a reference to particular Sections of the statutes and rules involved;
      - D) a brief statement of the matters asserted; and
      - E) a statement of the time and place that the hearing will be held if a timely request is made.
  - 4) Any organization receiving a "Notice of an Opportunity for Hearing" shall file a request for such hearing within 30 calendar days after the date of the notice or the hearing rights afforded under the Act shall be deemed waived.
  - 5) A request for hearing shall be filed with the Secretary, either by personal service or by certified or registered mail.
  - 6) Upon receipt by the Department of a timely and properly filed request for hearing, the hearing will be scheduled to commence within a reasonable time period.
  - 7) A "Notice of Hearing" which contains the information required by Section 45-25 of the Illinois Administrative Procedure Act (5 ILCS 100/45-25) will be sent to the parties at least ten calendar days prior to the scheduled hearing date.
  - 8) Pleadings may be amended at any time prior to hearing and may be amended at any time thereafter unless the hearing officer determines that amendment of the pleadings would cause delay in disposing of the issues of the case.
  - 9) Motions
    - 1) Motions unless made during a hearing shall be in writing; shall specify the relief or order sought and shall be served on all parties.
    - 2) Responses to written motions shall be in writing unless made during a hearing.
    - 3) Motions and responses to motions shall be filed with the hearing officer.
    - 4) Motions or responses to motions which allege facts not in the record shall be accompanied by supporting affidavit.
    - 5) Whenever a motion or a response to motion requests that relief be granted specific authority shall be cited under which the

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- hearing officer is on motions--shall be allowed only if the hearing officer deems it necessary for a fuller understanding of the issues presented.
- h) Discovery
- 1) The Secretary or the hearing officer shall, upon request, cause depositions of material witnesses within the State to be taken in the manner prescribed by Supreme Court Rules 201-212 (735--iBES 5/201-212)--and to that end compel the attendance of witnesses and the production of books, papers or memoranda.
  - 2) All evidence which forms the basis of the Department's proposed action--which would be adverse to any party other than the agency--will be made a part of the record and disclosed to the parties prior to the hearing.
- i) Service
- 1) All required notices shall be served either by personal service or by certified or registered mail.
  - 2) The official address for service on the Department is--100--W Randolph Suite 5-600--Chicago, Illinois 60601.
- j) Prehearing Conference
- 1) Prior to commencement of the hearing, the hearing officer shall conduct a prehearing conference--The purpose of the conference is for:
    - A) identification of contested issues,
    - B) the exchange of evidence to be presented in written form,
    - C) identification of issues--which--may be resolved by stipulation--and
    - D) consideration of any other matter which may aid in the efficient disposition of the case.
  - 2) Either party may elect to have a court reporter present during the prehearing conference--if no reporter is present, a written memorandum summarizing the discussions shall be prepared by the hearing officer and made a part of the official record of the case.
- k) Conduct of Hearing
- 1) A full and complete record of the hearing shall be kept by the Department--The record shall include:
    - A) all pleadings, notices, responses, motions and rulings,
    - B) evidence received,
    - C) a statement of any matters officially noticed,
    - D) offers of proof, objections and rulings thereon,
    - E) proposed findings and exceptions,
    - F) hearing officer report,
    - G) all staff memoranda or data submitted to the hearing officer in connection with the case, and
    - H) any communication prohibited as an ex-parte consultation as defined by Section 10-46 of the Illinois Administrative Procedure Act (5--iBES 100/10-60) but such communications

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- 2) All testimony shall be reported but need not be transcribed--at the Department's expense--unless the decision is appealed in accordance with the Administrative Review Law (735--iBES--5/Arf 211).
  - 3) Both the burden of going forward with evidence and the burden of proof rest with the party requesting a hearing--The burden of proof is to show by a preponderance of evidence on the record that the Department's decision is contrary to the evidence on the record when taken as a whole--the decision is arbitrary or capricious or the decision is contrary to law.
  - 4) All parties to the hearing shall be permitted to present testimony--offer evidence--cross-examine witnesses--and present argument.
  - 5) The hearing officer shall be authorized to conduct the hearing administer oaths, issue subpoenas to compel testimony or production of documents, hold conferences for clarification of contested issues or for settlement, rule on motions, grant continuances as may be necessary, call or examine witnesses, and take such other actions as may be necessary to fairly and expeditiously provide the parties with an opportunity to be heard.
  - 6) The hearing officer is not authorized to dispose of a case although disposition may be made of any contested issue by stipulation--Disposition of the entire case may also be made by stipulation--agreed settlement--consent order or default.
  - 7) Continuances and extensions of time shall be granted by the Secretary or hearing officer for good cause shown--Good cause is a bonafide reason on the part of the Department or any party to the hearing which would prevent the hearing from being held or completed as scheduled (e.g., illness of a party or an immediate family member, unavailability of counsel).
  - 8) In contested cases, the rules of evidence and rules for taking official notice will be as contained in Section 10-46 of the Illinois Administrative Procedure Act (5--iBES 100/10-46).
- Hearing Officer Report
- 1) Within 30 calendar days after the conclusion of a hearing--the hearing officer shall deliver a report of the hearing to the Secretary.
  - 2) All exhibits, pleadings, documents or other material made a part of the record will accompany the report.
  - 3) The report will summarize the testimony presented at the hearing and the hearing officer's opinion regarding the reliability of the witness.
- m) Proposal for Decision
- 1) When the Secretary has not read the record, the decision--if adverse to a party other than the agency--shall not be made until a proposal for decision is served upon the parties and an

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- opportunity is afforded to each party adversely affected to file exceptions and to present a brief.
- 2) The proposal for decision is prepared by one who has read the record and shall be approved by the Secretary for dissemination to the parties.
- 3) The proposal for decision shall contain a statement of the reasons for the proposal and of each issue of fact or law necessary to the proposed decision.
- 4) Exceptions and briefs shall be filed within 30 calendar days after the date of the proposal for decision.
- 5) Oral argument on issues presented in the exceptions and brief is not permitted.
- Final Decision
- 1) A final decision in a contested or uncontested case shall be in writing and shall include findings of fact and conclusions of law separately stated.
- 2) Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings.
- 3) Parties or their agents appointed to receive service of process shall be notified either personally or by registered or certified mail of any decision.
- 4) The final decision may impose an administrative warning, a financial penalty, probation, suspension, revocation or denial of licensure.

(Source: Amended at 23 Ill. Reg. 10803, effective AUG 23 1999)

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- 1) Heading of the Part: Office of Inspector General Investigations of Alleged Abuse or Neglect and Deaths in State-Operated and Community Agency Facilities
- 2) Code Citation: 59 Ill. Adm. Code 50
- 3) Section Numbers: Adopted Action:  
50.10 Amended  
50.20 Amended  
50.30 Amended  
50.50 Amended  
50.70 Amended  
50.80 Amended  
50.90 Added
- 4) Statutory Authority: Implementing and authorized by Section 6.2 of the Abused and Neglected Long Term Care Facilities Reporting Act [210 ILCS 30/6.2].
- 5) Effective Date of Amendments: August 23, 1999
- 6) Does this rulemaking contain an automatic repeal date? No
- 7) Does this amendment contain incorporations by reference? No
- 8) A copy of the adopted amendment, including any material incorporated by reference, is on file in the agency's principal office and is available for public inspection.
- 9) Notice of Proposal Published in Illinois Register: April 16, 1999, 23 Ill. Reg. 4357
- 10) Has JCAR Issued a Statement of Objections to these amendments? No
- 11) Difference between proposal and final version: Added the word "Alternatively" before "the employee" in Section 50.20(a)(1) and deleted the word "additionally".
- 12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreement letter issued by JCAR? Yes
- 13) Will this amendment replace an emergency amendment currently in effect? Yes
- 14) Are there any amendments pending on this Part? No
- 15) Summary and Purpose of Amendments: This rulemaking requires community service providers to check the Department of Public Health's Nurse Aide



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Registry for substantiated findings of abuse or neglect before hiring staff. It also prohibits the agencies from hiring an individual with such substantiated findings.

- 16) Information and questions regarding this adopted amendment shall be directed to:

Ms. Susan Weir, Bureau Chief  
Bureau of Administrative Rules and Procedures  
Department of Human Services  
100 South Grand Avenue East  
3rd Floor, Harris Bldg.  
Springfield, Illinois 62762  
Telephone number: (217) 785-9772

The full text of the adopted amendments begins on the next page:

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TITLE 59: MENTAL HEALTH  
CHAPTER 1: DEPARTMENT OF HUMAN SERVICES

PART 50

OFFICE OF INSPECTOR GENERAL  
INVESTIGATIONS OF ALLEGED ABUSE OR NEGLECT AND DEATHS IN  
STATE-OPERATED AND COMMUNITY AGENCY FACILITIES

Section

50.10	Definitions
50.20	Reporting allegations of abuse, neglect and death
50.30	Responsibilities of OIG for intake assessment
50.40	Method of investigation
50.50	Conduct of the investigation
50.60	Investigative file and preliminary report
50.70	Completed investigations and final report
50.80	Appeals process for findings of investigations
50.90	Notification of Nurse Aide Registry of Findings of Abuse or Neglect

AUTHORITY: Implementing and authorized by Section 6.2 of the Abused and Neglected Long Term Care Facilities Reporting Act (210 ILCS 30/6.2).

SOURCE: Adopted at 22 Ill. Reg. 19334, effective October 19, 1998; emergency amendment at 23 Ill. Reg. 4513, effective April 1, 1999, for a maximum of 150 days; amended at 23 Ill. Reg. 10812, effective Aug 20 1999.

Section 50.10 Definitions

For the purposes of this Part, the following terms are defined:

"Abuse." Any physical injury, sexual abuse, or mental injury inflicted on an individual other than by accidental means. Abuse also means any physical, sexual or mental abuse resulting in a serious injury inflicted on an individual by another person who is not an employee.

"Access." For the purpose of the Office of Inspector General's (OIG) investigations of allegations of abuse or neglect or death, means admission to a community agency or facility, interviewing appropriate individuals and employees, and obtaining any documents or records that OIG believes to be pertinent to the investigation. For a community agency, this must be granted by the community agency's authorized representative or his or her designee through a mutually agreed scheduling with OIG, unless OIG has cause to believe that the individual(s) is at risk of imminent danger or that advance notice may unduly hinder the investigation or make it ineffectual.

"Accidental." Occurring unexpectedly or by chance without intent or

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volition.

"Act." The Abused and Neglected Long Term Care Facility Resident Reporting Act [210 ILCS 30].

"ALC." The Department's Accreditation, Licensure and Certification unit.

"Allegation." Any assertion, complaint, suspicion or incident where abuse or neglect of an individual(s) may have occurred.

"Authorized representative." The administrative head or executive director of a community agency appointed by the community agency's governing body with overall responsibility for fiscal and programmatic management, or the facility director or hospital administrator of a Department facility, if this person is implicated in an investigation, the governing body of the community agency or the Secretary of the Department shall be deemed the authorized representative for that investigation.

"Community agency." Any community entity or program providing mental health or developmental disabilities services that is licensed, certified or funded by the Department and not licensed or certified by any other human service agency of the State (e.g., Departments of Public Health, Public Aid, and Children and Family Services).

"Complainant." Any person who reports an allegation of abuse or neglect or death directly to OIG with the exception of self reporting by a community agency or facility.

"Complaint." An allegation of abuse or neglect or a death reported directly to OIG through any other means except self-reports by the community agency or facility.

"Credible evidence." Any directly related physical injury or other physical documentary or testimonial evidence that supports the truthfulness of the complaint and that is known at the time.

"Days." Calendar days, unless otherwise specified.

"Deflection." Those situations in which an individual is presented for admission to a facility or agency and the facility or agency staff do not admit. This includes triage, redirection and denial of admission.

"Department." The Department of Human Services.

"Employee." Any person providing services at the direction of the

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owner or operator of the facility or community agency on or off site. This includes payroll personnel, contractors, subcontractors, and volunteers.

"Facility." A mental health and/or developmental disabilities center operated by the Department.

"Final report." A completed investigative report by the Inspector General that summarizes the evidence and that indicates whether the allegation of abuse or neglect is substantiated, unsubstantiated, or unfounded based on the evidence gathered from the investigation. If the authorized representative responds to the preliminary report, the final report shall include a copy of such response. The final report shall not contain actual or copies of witness statements, investigation notes, draft summaries, results of lie detector tests, investigative files or other raw data that was used to compile the final report (Section 6 of the Act). The completed investigatory report shall become final at the end of the reconsideration/response period.

"Imminent danger." A preliminary determination of immediate, threatened or impending risk of illness, mental injury, or physical injury to an individual(s) as would cause a reasonably prudent person to take immediate action and which is not immediately corrected, such as environmental or safety hazards.

"Individual." Any person receiving mental health or developmental disabilities services from a facility or community agency operated, licensed, certified, or funded by the Department.

"Medical treatment." Any treatment ordered or rendered to an individual by a physician regarding an injury. The use of a diagnostic procedure, such as x-rays or laboratory tests, with no subsequent medical treatment, does not in itself constitute medical treatment.

"Mental injury." Includes verbal abuse, psychological abuse or exploitation by an employee.

"Verbal abuse." The use of words by an employee toward or about and in the presence of an individual(s) which a reasonably prudent person would believe to, or the employee knows for that particular individual will, demean, curse, intimidate, harass, cause emotional anguish or distress, threaten harm, or knowingly precipitate maladaptive behavior on the part of the individual(s) whether or not there is a psychological injury.

"Psychological abuse." The use of signs, gestures or other actions by an employee toward or about and in the presence of an

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individual(s) which a reasonably prudent person would believe to, or the employee knows for that particular individual will, demean, curse, intimidate, harass, cause emotional anguish or distress, threaten harm, or knowingly precipitate maladaptive behavior on the part of the individual(s).

"Exploitation." Any act of forcing, compelling, or coercing—of enticing an individual(s) to perform services for the advantage of another, with or without an injury.

## "Neglect."

Any failure by a community agency or facility or employee thereof to carry out required and appropriate clinical services, habilitation, or treatment as ordered by a physician or other authorized personnel that is the proximate cause of psychological harm or physical injury to an individual. Consideration shall be given in instances when the right of the individual to refuse such clinical services, treatment or habilitation is asserted; or

Any act or omission by a community agency or facility or employee thereof that endangers an individual's health or safety or fails to respond to an obvious and immediate need of an individual, regardless of whether or not there is an injury; or

Any act or omission by a community agency or facility or employee thereof that results in any documented physical injury to an individual the circumstances or nature of which would cause a reasonably prudent person to believe neglect by the community agency or facility has occurred. Consideration shall be given to whether the injury was repeated or preventable. This includes individual to individual assaults that are allegedly the result of employee or facility neglect; or

Any act or omission by a community agency or facility or employee thereof that results in an individual's absence that would cause a reasonably prudent person to believe neglect by an employee, community agency or facility has occurred; or

Any act or omission by a community agency or facility or employee thereof that results in any individual to individual sexual penetration, sexual molestation, or sexual exploitation where one of the participants is unwilling or unable to consent to sexual activity of which an employee, community agency or facility has or should have knowledge that would cause a reasonably prudent person to believe neglect by an employee, community agency or facility has occurred; or

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Any act or omission by a community agency or facility or employee thereof that results in any exploitation of an individual by another individual of which an employee, community agency or facility has or should have knowledge that would cause a reasonably prudent person to believe neglect by an employee, community agency or facility has occurred.

"Non-serious injury." Any injury that does not fit the definition of "serious injury" as defined in this Section. Included in this classification are injuries such as red marks, scratches, superficial bruises, abrasions, lacerations not requiring sutures, sprains, jammed fingers or toes, and discolorations.

"OIG." The Office of Inspector General of the Department.

"OIG representative." An employee of OIG who is qualified as an investigator according to the qualifications established by the Central Management Services of the State of Illinois.

"Physical injury." Any act of direct physical mistreatment of an individual by an employee of a community agency or facility, such as hitting, kicking, pinching, choking, shoving, pushing, biting, slapping, punching, striking with an object, burning, dragging, or cutting, with or without an injury.

"Preliminary report." A summary of the evidence in an investigation with a recommendation as to whether the findings of the investigation indicate that the allegation should be substantiated, unsubstantiated, or unfounded. The preliminary report shall not contain actual or copies of witness statements, investigation notes, draft summaries, results of lie detector tests, investigative files, or other raw data that was used to compile the preliminary report.

"Preponderance of the evidence." Proof sufficient to persuade the finder of fact that a proposition is more likely true than not true.

"Reasonably prudent person." Someone who exercises good judgment and common sense. A reasonably prudent person has average intelligence and perception.

"Required reporter." Any employee and any person employed by the Department who suspects, witnesses, or is informed of an allegation of abuse or neglect or death shall be deemed the required reporter for purposes of this Part.

"Routine programmatic." Refers to services provided as part of the individual's habilitation plan, treatment plan, or as a regular or ongoing component of the community agency's or facility's general

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services or practices.

"Secretary." The Secretary of the Department or his or her designee.

"Self report." A report of an allegation of abuse or neglect or death in a program or activity for which a community agency or facility has administrative responsibility and which is reported to OIG by that community agency or facility through the formal reporting process in accordance with this Part.

"Serious injury." An injury such as:

A laceration requiring sutures, a complete or partial fracture of any bone, loss of teeth, second or third degree burn, severed extremity, any injury that results in a severe impairment, temporary or permanent disfigurement, threatens life, results in temporary or permanent loss of use of limb or loss of consciousness, results in a grand mal seizure or any other injury for which a reasonably prudent person would obtain medical treatment; or

An injury that has significant potential for transmitting serious infectious disease. An injury of this type may occur when the following elements are present:

One individual is known or reasonably suspected to have a serious infectious disease;

The injury is of a type that could transmit a serious infectious disease; and

One recipient is known not to have, or it is reasonably believed that he or she does not have, a serious infectious disease; or

An injury that is initially classified as non-serious but at some point becomes serious (for example, a contusion to the head that is found to be a serious hematoma or results in internal bleeding).

"Sexual abuse." Any act of sexual penetration, molestation, or exploitation of an individual by an employee of the community agency or facility.

"Sexual exploitation." The sexual use of an individual for another person's sexual gratification, arousal, advantage, or profit.

"Sexual molestation." Any intentional or knowing touching or fondling

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by one person, either directly or through clothing, of the sex organs, anus, or breast of the other person, for the purpose of sexual gratification or arousal of either person.

"Sexual penetration." Any contact, however slight, between the sex organ of one person and the sex organ, mouth, or anus of another person, or any animal or object inserted into the sex organ or anus of another person for the purpose of sexual gratification or arousal of either person.

"Substantiated." A preponderance of the evidence found during any investigation indicates that abuse or neglect occurred.

"Substantial evidence." Such evidence as a reasonable person can accept as adequate to support a conclusion.

"Temporary absence." A home visit, unauthorized absence and any other situation where the individual is a resident of the facility or community agency but not either physically in the facility or community agency or on the facility or community agency campus.

"Unfounded." There is no credible evidence that abuse, neglect, or both occurred.

"Unsubstantiated." There is credible evidence, but less than a preponderance of evidence to show that abuse, neglect, or both occurred.

(Source: Amended at 23 Ill. Reg. 10812 - effective Aug 23 1999)

Section 50.20 Reporting allegations of abuse, neglect and death

- a) Self-reporting - facility or community agency employees
  - 1) If an employee witnesses, is told of, or has reason to believe an incident of abuse or neglect or a death has occurred, the employee shall report to the community agency/facility the allegation according to the community agency's or facility's procedures. The employee shall report the allegation immediately, but no later than the time frames specified in subsections (a)(2), (3) and (4). Alternatively, the employee may report the allegation directly to the OIG as specified in subsection (a)(10). Such employees shall be deemed the "required reporter" for purposes of this Part.
  - 2) Within one hour after the discovery of an incident of alleged abuse or neglect or a death, the authorized representative or his or her designee of the community agency or facility shall report to OIG using the OIG hotline number 1-800-368-1463. This



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## Includes:

- A) Any allegation of abuse that may be the result of any action by an individual or employee; that may be the result of any action
- B) Any allegation of neglect that may be the result of any action or omission by a community agency, facility, or an employee thereof; and
- C) Any death of an individual that occurs either within a facility or community agency program or within 14 days after discharge, transfer or deflection.
- 3) Within 24 hours after the discovery of any serious injury to an individual, however inflicted (including self-injury), that is not alleged to be the result of abuse or neglect, the authorized representative or his or her designee of the community agency or facility shall report the injury to OIG using the OIG hotline number 1-800-368-1463 (voice or TTY).
- 4) Within 24 hours after the discovery of the following types of incidents, but no less frequently than monthly, the authorized representative or his or her designee of the community agency or facility shall report to the OIG using the OIG hotline number 1-800-368-1463 (voice or TTY) or by faxing a report to OIG. This includes the following individual-to-individual injuries.
  - A) All injuries, whether serious or non-serious, that are inflicted on an individual by another individual or individuals other than by accidental means when the injuries occur three times a month (or more); and
  - B) Incidents with any serious or non-serious, non-accidental accidents injury involving more than two individuals.
- 5) Required reporter - facility  
The required reporter of a facility is required to complete the OIG Incident Report Form for reporting alleged abuse, neglect, and death and submit the form to the authorized representative or his or her designee according to facility procedures.
- 6) Required reporter - community agency  
The required reporter of a community agency is required to complete a form designated by the community agency and submit the form to the authorized representative or his or her designee according to community agency procedures.
- 7) Verbal reporting - community agency or facility  
Community agency or facility procedures may allow employees to report the allegation verbally to the selected community agency or facility designee(s) (for example, the most immediate on-duty supervisor or security officer) provided that the designee then completes the form required by the community agency or facility.
- 8) Screening of reports prohibited -- community agency or facility  
Screening of reports withholding reports of incidents or allegations of abuse or neglect from OIG is not allowed.
- 9) Completion of OIG-required form - community agency or facility  
The authorized representative or his or her designee shall submit

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the completed OIG-required form for reporting alleged abuse, neglect, and a death to OIG by fax or by mail within 24 hours after telephoning the report to the OIG hotline.

- A) Reporting to OIG shall not relieve the community agency or facility from any other statutory or regulatory reporting requirements applicable to the community agency or facility.
- B) The authorized representative or his or her designee who reviews the prescribed OIG form for reporting alleged abuse, neglect, or death at the respective community agency or facility shall not delete, delay, withhold, limit, or otherwise restrict any of the information as contained on the OIG prescribed reporting form. Information may be added by the authorized representative or his or her designee for clarification purposes only.
- 10) Direct notification to OIG - community agency or facility employees  
Community agency or facility employees may notify OIG directly of an allegation of abuse or neglect or a death by using the OIG hotline fax or mail. An employee notifying OIG in this way shall be considered the complainant in the case.
- b) OIG hotline  
The OIG hotline (1-800-368-1463) shall be communicated to individuals and guardians at the time of admission and the number shall be posted in plain sight at each community agency and facility.
- c) Other reports - complainant
  - 1) Any other person, individual, family member, guardian, advocate, or staff from another community agency or facility who witnesses, is told of or has reason to believe an incident of alleged abuse or neglect or a death of an individual may have occurred, may report the incident to OIG by telephoning the OIG hotline, or in writing by fax or mail.
  - 2) The OIG representative shall notify the authorized representative of the community agency or facility or his or her designee that an allegation has been received unless such notification compromises the integrity of the investigation, such as, an allegation involving the authorized representative or his or her designee.
- d) Training and technical assistance  
Any person, community agency, or facility may request training or technical assistance from OIG in identifying, reporting, investigating and preventing abuse or neglect, or participation in applicable OIG-sponsored training as referenced in Section 6.5 of the Act.
- e) Misleading reports  
Nothing in this rule protects persons who knowingly make misleading reports to harass or compromise community agency or facility effectiveness from action available to either the community agency or facility. Nothing in this Part prohibits OIG, other enforcement authorities, or any employees jeopardized by such reporting from

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obtaining allowable remedies.

- f) Notification of individual  
The authorized representative or designee shall notify the individual who was allegedly abused or neglected and his or her legal guardian of the allegation within 24 hours after receiving the allegation. If the authorized representative or designee is unable to reach the guardian by phone, a letter of notification shall be sent within 24 hours.

(Source: Amended at 23 Ill. Reg. 10812 effective Aug 23 1999)

## Section 50.30 Responsibilities of OIG for intake assessment

- a) Availability of OIG representative  
An OIG representative shall be available 24 hours a day to receive reports of allegations of abuse, neglect or death and provide any technical assistance with filling the required OIG prescribed form for reporting alleged abuse, neglect, and death.

- b) Responsibility of OIG representative receiving the report  
The OIG representative receiving the report of the allegation is responsible for assessing, based on the information received at intake, whether the allegation could constitute abuse or neglect and whether OIG has the authority to investigate in accordance with the Act. The representative shall determine whether the allegation could constitute abuse or neglect and whether OIG has the authority to investigate in accordance with the Act within 24 hours after receiving the call.

- c) Reports involving routine programmatic, licensure or certification matters

- 1) OIG shall have no supervision over or involvement in routine, programmatic, licensure, or certification operations of AIC, the Department, or any of its funded agencies. (Section 6.2(a) of the Act).

- 2) If the reported allegation relates to licensure or certification standards and is deemed not to be abuse or neglect, OIG shall refer the allegation to AIC and notify the community agency or facility and/or the complainant of such referral in writing within 5 working days.

- 3) If the reported allegation relates to routine programmatic operations and is deemed not to be abuse or neglect, OIG shall refer the allegation to the appropriate office of the Department and notify the community agency or facility and/or complainant of such referral in writing within 5 working days.

- d) Investigations by two or more State agencies  
When two or more State agencies could investigate an allegation of abuse or neglect at a community agency or facility, OIG shall not conduct an investigation that is redundant to an investigation conducted by another State agency (Section 6.2(a) of the Act) unless

another State agency has requested that OIG participate in the investigation (such as the Departments of State Police, Children and Family Services, or Public Health).

- e) Referral to the Department of State Police  
The Inspector General shall, within 24 hours after receiving a report of an allegation of abuse or neglect or death, determine whether the evidence indicates that any possible criminal act has been committed or law enforcement expertise is required, and shall refer such allegations to the Department of State Police for investigation in accordance with Section 6.2(b) of the Act.

- f) Referral to the appropriate authority

If the reported allegation is not within OIG authority or does not constitute abuse or neglect or death, the OIG representative shall document receipt of the report and provide the authorized representative or his or her designee and complainant with the appropriate referral information in writing within 5 working days.

- g) Authorized representative - community agency  
If the allegation constitutes abuse or neglect or death and is within the jurisdiction of OIG, the authorized representative or his or her designee of a community agency shall:

- 1) Ensure the immediate health and safety of involved individuals and employees, including ordering medical examinations when applicable and removing alleged accused employee(s) from having contact with the involved individual(s) when there is credible evidence supporting the allegation of abuse and neglect;

- 2) Secure the scene of the incident and preserve evidence, if applicable;

- 3) Identify and separate potential witnesses, when applicable; and

- 4) Identify and record all persons at the scene at the time of the incident and, when relevant, those who had entered the scene prior to the scene being secured;

- 5) Secure all relevant physical evidence, such as clothing, if applicable;

- 6) Photograph the scene of the incident and the individual's injury, when applicable; and

- 7) Notify an OIG representative.  
If the allegation constitutes abuse or neglect or death, the authorized representative or his or her designee of a facility shall:

- 1) Ensure the immediate health and safety of involved individuals and employees, including ordering medical examinations when applicable and removing alleged accused employee(s) from having contact with the involved individual(s) when there is credible evidence supporting the allegation of abuse and neglect;

- 2) Secure the scene of the incident and preserve evidence, if applicable;

- 3) Identify and separate potential witnesses, when applicable;

- 4) Identify and record all persons at the scene at the time of the

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incident and, when relevant, those who had entered the scene prior to the scene being secured;

- 5) Secure all relevant physical evidence, such as clothing, if applicable;
- 6) Photograph the scene of the incident and the individual's injury, when applicable;

- 7) Notify an OIG representative; and
- 8) Initiate the preliminary steps of the investigation by the designated facility employees who have been trained in OIG-approved methods to conduct initial interviews and gather evidence and documents. The assigned OIG investigator is responsible for the investigation of allegations of abuse or neglect or of deaths from other than natural causes.

- i) Determination of further action by OIG representative

The OIG representative may determine what further action, if any, is necessary to protect the safety of any individual, secure the scene of the alleged incident, preserve evidence and maintain the integrity of the investigation. Such action may include immediate emergency referrals (such as medical or housing services), the notification of law enforcement officials, requesting hospital services or contacting the Department or other State agencies for assistance.

- j) Indirect report of an allegation

If the report of an allegation of abuse or neglect or a death was not received directly from the community agency or facility, an OIG representative shall notify the authorized representative or his or her designee immediately but not later than within 24 hours that an allegation has been received unless such notification compromises the integrity of the investigation.

(Source: Amended at 23 Ill. Reg. 10812 effective Aug 23 1999)

## Section 50.50 Conduct of the investigation

- a) Procedures

Depending on the nature of the allegation, an investigation shall consist of the following procedures:

- 1) To protect the integrity of the investigation when appropriate the scene of the incident shall be secured, witnesses shall be identified and separated, and physical evidence shall be preserved and secured;
- 2) To gather testimonial evidence in instances when appropriate initial statements and/or follow-up statements from persons involved including victim(s), alleged perpetrator(s), and witness(es) shall be obtained by face-to-face interview, in writing, or by telephone; and
- 3) To obtain copies of pertinent documents such as progress notes, injury reports, individual records, photographs.

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- b) Confidentiality

Any allegations or investigations of reports of abuse and neglect shall remain confidential until a final report is completed (Section 6.2(a) of the Act). The identity of any person as a complainant shall remain confidential in accordance with the Freedom of Information Act [5 ICs 140] or unless identification is authorized by the complainant. Information concerning diagnosis and treatment for alcohol or drug abuse shall be disclosed to OIG by community agencies only in accordance with federal regulations at 42 CFR 2. Information concerning tests for human immunodeficiency virus (HIV) and diagnosis and treatment for acquired immune deficiency syndrome (AIDS) shall be disclosed to OIG by community agencies only in accordance with the AIDS Confidentiality Act [410 ICs 305].

- c) Respect for the dignity and rights of persons involved
- All investigations shall be conducted in a manner that respects the dignity and human rights of all persons involved as part of the investigation.

- d) Integrity of the investigation

All investigations shall be conducted in a manner that maintains the integrity of the investigation and that does not give cause to question the investigator's objectivity.

- e) Subject(s) of the investigation

An employee does not have a constitutional or statutory right to representation during an interview that is part of an administrative investigation of an allegation of abuse or neglect. An employee who believes that he or she is the subject of an investigation may request representation during the interview. This request for representation may be denied by the OIG investigator. Grounds for denial may be: unvarnished delay; the representative may pose a conflict of interest or interfere with the investigation; the representative's presence may render the interview ineffective; or any other circumstance that in the investigator's opinion would compromise the integrity of the investigation.

- f) Non-interference

No person shall interfere with or obstruct the conduct of any OIG interview or investigation. The OIG investigator shall decide if anyone other than the person being interviewed shall be present at the interview.

- g) Availability of OIG to a community agency or facility

If the community agency or facility has responsibility for conducting the investigation, OIG shall be available on request to answer questions and provide advice or technical assistance regarding the investigatory process.

- h) Access by OIG

OIG shall be granted access, for the purpose of investigating a report of abuse or neglect or a death, to any facility or program funded, licensed or certified by the Department that is subject to the provisions of Section 6.2 of the Act to investigation by the Office of

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*Inspector General for report of abuse or neglect or a death.* (Section 6.2(f) of the Act)

- 1) *OIG shall seek access in a manner that respects the dignity and human rights of all persons involved, maintains the integrity of the investigation and does not unnecessarily disrupt programs and/or services.*
- 2) *When advance notice to an authorized representative or his or her designee is not provided, OIG shall, on arrival at the community agency or facility site, request that an on-duty and on-site employee notify the authorized representative or his or her designee of OIG's arrival.*

**5147** *if at any time during the course of the investigation OIG determines that:*

- 1) *The allegation involves a possible criminal act or that special expertise is required, OIG shall notify within 24 hours the Department of State Police and local law enforcement authorities as appropriate.*
- 2) *An individual's health or safety is in imminent danger, the Inspector General shall immediately notify the Secretary or his or her designee and the authorized representative of the community agency or facility or his or her designee.*
- 3) *There is reason to believe that a violation of an existing Department Rule may have occurred, OIG shall immediately notify the authorized representative or his or her designee of the community agency and the appropriate Department office or division.*

(Source: Amended at 23 Ill. Reg. 10812 effective AUG 23 1999)

## Section 50.70 Completed investigations and final report

- a) *Acceptance of preliminary report*  
At the end of the 45-days reconsideration/response time period, the preliminary report of the investigation shall be considered a final report and the investigation considered complete.
- b) *Final report to the Secretary and community agency or facility*  
*The Inspector General shall, within 10 days after the transmittal date of a completed investigation where abuse or neglect is substantiated or administrative action is recommended, provide a complete (final) report on the case to the Secretary and to the community agency or facility in which the abuse or neglect was alleged to have happened.* (Section 6.2(c) of the Act)

- c) *Informing individual and alleged perpetrator of report*  
Within 15 days after receiving a final report or notification, the authorized representative or designee shall inform the individual, the individual's legal guardian and the alleged perpetrator whether the allegation was substantiated, unsubstantiated or unfounded.

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- d) *Release of final reports*  
*Any allegations or investigations of reports of abuse and neglect shall remain confidential until a final report is completed.* (Section 6.2(a) of the Act)

- 1) *Final reports of substantiated investigations shall be released in accordance with the Act, Mental Health and Developmental Disabilities Confidentiality Act [740 ILCS 1101], and the Freedom of Information Act [5 ILCS 140].*
- 2) *Final reports of unsubstantiated or unfounded allegations shall remain confidential except that final reports shall be released pursuant to Section 6 of the Act or a valid court order.*

- 3) *The identity of any person as a complainant shall remain confidential in accordance with the Freedom of Information Act [5 ILCS 140], or unless authorized by the complainant.*

(Source: Amended at 23 Ill. Reg. 10812 effective AUG 23 1999)

## Section 50.80 Appeals process for findings of investigations

*There shall be an appeals process for any person or community agency that is subject to any action based on the findings of an investigation.* (Section 6 of the Act)

- a) *A person or community agency may appeal an action taken based on a finding of an investigation on the grounds that the action was unduly punitive or unduly lenient.*

- b) *The Department, facility or agency taking the action on the basis of an investigation shall inform the agency or employee of the right to appeal under this Part.*

- c) *The individual or community agency may request a hearing no later than 30 days after the action occurred. The individual or community agency shall submit a letter to the Bureau of Administrative Hearings, Department of Human Services, 100 S. Grand Ave. East, Springfield, IL 62762, requesting a hearing and setting out the reasons why the action was in error.*

- d) *The hearings under this Section shall be conducted in accordance with the Department's Rule on the conduct of hearing and appeals, at 89 59 Ill. Adm. Code 508 484r70.*

- e) *At the hearing, the community agency, the facility or the Department shall have the burden of proving that its action was fair and supported by credible evidence.*

- f) *An appeal of an agency decision terminating employment under this Section and an appeal of notification of the Nurse Aide Registry under Section 50.90 shall be consolidated if the Administrative Law Judge determines that the issues in the appeals are substantially the same.*

(Source: Amended at 23 Ill. Reg. 10812 effective AUG 23 1999)



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**Section 50.90 Notification of Nurse Aide Registry of Findings of Abuse or Neglect**

Upon notification by a community agency that an employee has been terminated due to a substantiated finding of abuse or neglect, the Inspector General shall notify the individual that the Nurse Aide Registry will be informed of the substantiated finding, and notify the individual of the right to appeal this action as provided by Section 50.80. At least 30 days after providing this notification or after conclusion of any hearing conducted pursuant to the provisions of Section 50.80, the Inspector General shall inform the Nurse Aide Registry of the substantiated finding of abuse or neglect for inclusion of the information into the Registry, unless a hearing concludes that the Inspector General should not take this action.

(Source: Added at 23 Ill. Reg. 10812 effective AUG 23 1999)

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- 1) Heading of the Part: Recovery of Misspent Funds
- 2) Code Citation: 89 Ill. Adm. Code 527
- 3) Section Numbers: Adopted Action:  
527.10 Amended  
527.100 Amended
- 4) Statutory Authority: Implementing the Illinois Grant Funds Recovery Act [30 ILCS 705] and authorized by Section 3 (k) of the Disabled Persons Rehabilitation Act [20 ILCS 2405/3].
- 5) Effective Date of Amendments: August 23, 1999
- 6) Does this rulemaking contain an automatic repeal date? No
- 7) Does this amendment contain incorporations by reference? No
- 8) A copy of the adopted amendments, including any material incorporated by reference, is on file in the agency's principal office and is available for public inspection.
- 9) Notice of Proposal Published in Illinois Register: April 16, 1999, 23 Ill. Reg. 4359
- 10) Has JCAR Issued a Statement of Objections to these amendments? No
- 11) Difference between proposal and final version: None
- 12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreement letter issued by JCAR? Yes
- 13) Will this amendment replace an emergency amendment currently in effect?  
Yes
- 14) Are there any amendments pending on this Part? No
- 15) Summary and Purpose of Amendments: This rulemaking has been amended to make this Part consistent with the new DHS "Administrative Hearings" rule. The change places appeals by individuals covered by Part 527 under the new hearing rulemaking.
- 16) Information and questions regarding these adopted amendments shall be directed to:  
  
Ms. Susan Weir, Bureau Chief  
Bureau of Administrative Rules and Procedures  
Department of Human Services

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100 South Grand Avenue East  
3rd Floor, Harris Bldg.  
Springfield, Illinois 62762  
(217) 785-9772

The full text of the adopted amendments begins on the next page:

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NOTICE OF ADOPTED AMENDMENTS  
TITLE 89: SOCIAL SERVICES  
CHAPTER IV: DEPARTMENT OF HUMAN SERVICES  
SUBCHAPTER a: GENERAL PROGRAM PROVISIONS

PART 527  
RECOVERY OF MISSPENT FUNDS

Section

527.10 General Statement of Purpose and Applicability  
527.100 Initial Collection Activity  
527.200 Informal Hearing (Repealed)  
527.300 Formal Hearing (Repealed)

AUTHORITY: Implementing the Illinois Grant Funds Recovery Act [30 ILCS 705] and authorized by Section 3(k) of the Disabled Persons Rehabilitation Act [20 ILCS 2405/3].

SOURCE: Adopted at 10 Ill. Reg. 3840, effective February 7, 1986; amended at 14 Ill. Reg. 18844, effective November 7, 1990; recodified from the Department of Rehabilitation Services to the Department of Human Services at 21 Ill. Reg. 9325; emergency amendment at 23 Ill. Reg. 4531, effective April 2, 1999, for a maximum of 150 days; amended at 23 Ill. Reg. 10830 effective AUG 23 1999.

Section 527.10 General Statement of Purpose and Applicability

Funds which are granted or authorized by the Department of Human Services Office of Rehabilitation Services (DHS-ORS) to individuals or organizations for specific purposes and later found to have been spent for other purposes require DHS to collect those funds.

(Source: Amended at 23 Ill. Reg. 10830, effective AUG 23 1999)

Section 527.100 Initial Collection Activity

- a) The DHS-ORS employee who is responsible for authorizing payments to the recipient of funds must monitor all such payments for proper expenditure. Upon discovering that such funds are being used for purposes other than those specified by the grant or contract entered into by the recipient, this employee must notify the DHS-ORS Central Office. The investigator in Central Office shall make a determination as to whether funds have been misspent or fraud has occurred based on the data provided by the employee.
  - 1) If it is determined that funds were not misspent, the employee shall be instructed not to take any further actions.
  - 2) If it is determined fraud may have occurred, the matter shall be referred to the Illinois Department of State Police for

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- disposition.
- 3) If it is determined that funds were misspent, the recipient of the funds shall be requested to sign an Agreement for Repayment of Funds (IL488-1642) (Agreement).
  - b) If the recipient of the funds agrees to pay back the misspent monies, the Agreement will verify the amount of money to be paid back, the schedule of payments agreed to by the employee and the recipient, and to whom the amount is payable. A copy of this Agreement will be sent to the BHS Fiscal Division, Springfield. DHS-ORS will agree to allow the recipient to pay back the funds in allotments over a reasonable period of time based on the amount of the funds and the ability of the recipient to repay. As an alternative to direct repayment of funds, DHS-ORS will agree to allow the amount of repayment to be offset against existing or future grants upon the request of the recipient. If a payment is not received within 10 working days after the due date, the Fiscal Division shall send a letter to the recipient stating that payment has not been received and that legal action shall be taken to collect the entire remaining balance. This letter shall contain the date and content of the original agreement, information regarding the recipient's right to appeal under procedures established at 89-III-Adm--Code-519 and the date the debt shall be determined delinquent (which shall be 35 calendar days from the date of the letter).
  - c) If no agreement is reached between the employee and the recipient to pay back the misspent funds, the employee must prepare a memorandum to his/her supervisor (or other DHS-ORS staff with supervisory responsibility for a particular grant or contract) providing information on what attempts have been made to date to collect the funds.
  - d) The employee's supervisor shall prepare a letter to the recipient to notify him/her that actions to collect the funds will proceed and contain information regarding the recipient's right to appeal under 89 Ill. Adm. Code 508.
  - e) The letter from the employee's supervisor to the recipient shall be sent by certified mail with return receipt requested and will include a copy of DHS rules, 89 Ill. Adm. Code 508 519, as well as:
    - 1) a summary of the information contained in the original report provided per subsection (a) of this Section (including the identification of the allegedly misspent money, the amount of money which was allegedly misspent, the basis on which this amount was determined, and the basis on which it was determined that the money was allegedly misspent);
    - 2) a statement that the supervisor has reviewed the facts in question and BHS Central Office has determined that the collection of these funds is appropriate;
    - 3) notice that DHS will initiate collection procedures for the allegedly misspent money after 30 days unless the recipient

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- requests a hearing in writing under per 89 Ill. Adm. Code 508 519, or signs an Agreement;
- 4) a statement that this request for a hearing must be made to the individual's supervisor (including that person's name and address).
  - f) If the recipient does not request the hearing within 30 days ~~timeframes-set-out-in-89-III-Adm--Code-519~~, the supervisor will notify the Fiscal Division in Central Office to complete an Involuntary Withholding Request (Form C-33) and send the completed form to the Comptroller's Office [15 ILCS 405/10.05] ~~III-Rev-Stat--1989--ch-35--per-218-857~~.

(Source: Amended at 23 Ill. Reg. **10830**, effective Aug 23 1999 )

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- 1) Heading of the Part: Rules of Practice and Procedure in Administrative Hearings

- 2) Code Citation: 77 Ill. Adm. Code 2000

<u>Section Numbers:</u>	<u>Adopted Action:</u>
2000.10	Repealed
2000.20	Repealed
2000.30	Repealed
2000.40	Repealed
2000.50	Repealed
2000.60	Repealed
2000.70	Repealed
2000.80	Repealed
2000.90	Repealed
2000.100	Repealed
2000.110	Repealed
2000.120	Repealed
2000.130	Repealed
2000.140	Repealed
2000.150	Repealed
2000.160	Repealed
2000.170	Repealed
2000.180	Repealed
2000.190	Repealed
2000.200	Repealed
2000.210	Repealed

- 4) Statutory Authority: Implementing and authorized by the Alcoholism and Substance Abuse Act (Ill. Revised Stat. 1985, Ch. 111 1/2, pars. 6301 et seq.).

- 5) Effective Date of Repealer: August 23, 1999

- 6) Does this rulemaking contain an automatic repeal date? No

- 7) Does this repealer contain incorporations by reference? No

- 8) A copy of the adopted repealer, including any material incorporated by reference, is on file in the agency's principal office and is available for public inspection.

- 9) Notice of Proposal Published in Illinois Register: April 26, 1999, 23 Ill. Reg. 4361

- 10) Has JCAR Issued a Statement of Objections to this repealer? No

- 11) Difference between proposal and final version: None

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- 12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreement letter issued by JCAR? Yes

- 13) Will this repealer replace an emergency repealer currently in effect? Yes

- 14) Are there any amendments pending on this Part: No

- 15) Summary and Purpose of repealer: This rulemaking is part of the Department's effort to consolidate all hearings covered by the Illinois Administrative Procedure Act. This rulemaking has been repealed and replaced with 69 Ill. Adm. Code 508, "Administrative Hearings."

- 16) Information and questions regarding this adopted repealer shall be directed to:

Ms. Susan Weir, Bureau Chief  
Bureau of Administrative Rules and Procedures  
Department of Human Services  
100 South Grand Avenue East  
3rd Floor, Harris Bldg.  
Springfield, Illinois 62762  
(217) 785-9772



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- 1) Heading of the Part: Standards and Requirements for Pre-admission Screening and Participating Mental Health Centers
- 2) Code Citation: 59 Ill. Adm. Code 258

- 3) Section Numbers:                      Adopted Action:  
     258.260                              Amended  
     258.270                              Repealed

- 4) Statutory Authority: Implementing Sections 3-207, 3-208, 3-300, 3-400, 3-405, 3-502, 3-504, 3-601, 3-603, 3-606, 3-607, 3-706, 3-810, 3-811, 3-812, 3-902, and 3-909 [405 ILCS 5/3-207, 3-208, 3-300, 3-400, 3-405, 3-502, 3-504, 3-601, 3-603, 3-606, 3-607, 3-706, 3-810, 3-811, 3-812, 3-902, and 3-909] and authorized by Section 5-104 of the Mental Health and Developmental Disabilities Code [405 ILCS 5/5-104] and Section 5 of the Mental Health and Developmental Disabilities Administrative Act [20 ILCS 1/05/5].

- 5) Effective Date of Amendments: August 23, 1999

- 6) Does this rulemaking contain an automatic repeal date? No

- 7) Does this amendment contain incorporations by reference? No

- 8) A copy of the adopted amendment, including any material incorporated by reference, is on file in the agency's principal office and is available for public inspection.

- 9) Notice of Proposal Published in Illinois Register: April 16, 1999, 23 Ill. Reg. 4363

- 10) Has JCAR Issued a Statement of Objections to these amendments? No

- 11) Difference between proposal and final version: None

- 12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreement letter issued by JCAR? Yes

- 13) Will this amendment replace an emergency amendment currently in effect?  
     Yes

- 14) Are there any amendments pending on this Part: No

- 15) Summary and Purpose of Amendments: This rulemaking is part of the Department of Human Services effort to consolidate all hearings covered by the Illinois Administrative Procedure Act. Section 258.270 has been repealed and replaced by 89 Ill. Adm. Code 508. Section 258.260 has been amended to include specific requirements previously included in Section

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258.270.

- 16) Information and questions regarding this adopted amendment shall be directed to:

Ms. Susan Weir, Bureau Chief  
 Bureau of Administrative Rules and Procedures  
 Department of Human Services  
 100 South Grand Avenue East  
 3rd Floor, Harris Bldg.  
 Springfield, Illinois 62762  
 (217) 785-9772

The full text of the adopted amendments begins on the next page:

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TITLE 59: MENTAL HEALTH  
CHAPTER I: DEPARTMENT OF HUMAN SERVICESPART 258  
STANDARDS AND REQUIREMENTS FOR  
PRE-ADMISSION SCREENING AND PARTICIPATING MENTAL HEALTH  
CENTERS

## SUBPART A: GENERAL PROVISIONS

Section  
258.100 Purpose  
258.110 Incorporation by reference  
258.120 Individuals' rights  
258.130 Definitions

## SUBPART B: PARTICIPATING MENTAL HEALTH CENTER REQUIREMENTS

Section  
258.200 Applicability  
258.210 Criteria for application and participation  
258.220 Application and formal agreement  
258.230 Renewal of formal agreement  
258.240 Non-transferability of formal agreement  
258.250 Withdrawal  
258.260 Denial of or revocation of formal agreement  
258.270 Hearings regarding denial or revocation of formal agreement  
(Repealed)  
258.280 Annual directory

## SUBPART C: SCREENING AND DISPOSITION SERVICES

Section  
258.300 Screening service requirements  
258.310 State-operated facility admission criteria  
258.320 State-operated facility admission disposition  
258.330 Court-ordered admissions  
258.340 Admission of individuals alleged to be subject to involuntary admission  
258.350 Court linkage  
258.360 Linkage and continuity of care  
258.370 Confidentiality  
258.380 Clinical records  
258.390 Service area boundaries, community service area boundaries and requirements  
258.400 Responsibility for undomiciled individuals and individuals from a geographic area other than that served by the participating mental

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health center  
Interagency linkages

## SUBPART D: QUALITY ASSURANCE

Section  
258.410 Quality assurance requirements and performance indicators  
258.500 Contract dispute resolution  
258.510 Disposition dispute resolution process  
258.520 Utilization review hearings  
258.530 Complaint investigation  
258.540

AUTHORITY: Implementing Sections 3-207, 3-208, 3-300, 3-400, 3-405, 3-502, 3-504, 3-601, 3-601.1, 3-603, 3-606, 3-607, 3-702, 3-704, 3-706, 3-810, 3-811, 3-812, 3-902 and 3-909 [405 ILCS 5/3-207, 3-208, 3-300, 3-400, 3-405, 3-502, 3-504, 3-601, 3-601.1, 3-603, 3-606, 3-607, 3-702, 3-704, 3-706, 3-810, 3-811, 3-812, 3-902 and 3-909] and authorized by Section 5-104 of the Mental Health and Developmental Disabilities Code [405 ILCS 5/5-104] and Section 5 of the Mental Health and Developmental Disabilities Administrative Act [20 ILCS 1705/5].

SOURCE: Adopted at 19 Ill. Reg. 8203, effective June 15, 1995; recodified from the Department of Mental Health and Developmental Disabilities to the Department of Human Services at 21 Ill. Reg. 9321; emergency amendment at 23 Ill. Reg. 4547, effective April 2, 1999, for a maximum of 150 days; amended at 23 Ill. Reg. 10837, effective Aug 23 1999.

## SUBPART B: PARTICIPATING MENTAL HEALTH CENTER REQUIREMENTS

## Section 258.260 Denial of or revocation of formal agreement

- a) The Department may deny or revoke an agreement at any time if the PMHC:
- 1) Fails to comply with the service requirements identified in Subpart C of this Part;
  - 2) Fails to comply with the general agency requirements identified in Subpart B of this Part; or quality assurance requirements identified in Subpart D of this Part;
  - 3) Fails to correct deficiencies identified as a result of an on-site review by the Department;
  - 4) Submits false information either on Department forms or during an on-site review;
  - 5) Refuses to permit or participate in an on-site review;
  - 6) Willfully violates any rights of individuals being served;
  - 7) Fails to comply with the terms of the formal agreement; or
  - 8) Conducts itself so as to present a conflict of interest with the role of a PMHC.
- b) If the Department determines that the health and safety of individuals

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is at risk, the agreement shall be revoked, at the Department's discretion, as soon as practical while preserving the health and safety of the individuals served by the PMHC. The Department shall immediately take all steps necessary to insure the health and safety of all affected individuals.

c) Notice of intent to revoke will be given 90 days prior to the date of revocation, if the health and safety of individuals is not at risk.

d) The 90 days notice period may be used by the PMHC to correct deficiencies, and on submission of proof of correction, the revocation may be reversed.

e) The Department shall refuse to enter into an agreement or renew an agreement or shall revoke an agreement with an applicant if the owner and/or authorized representative of the applicant or licensee has been convicted of a felony, or a misdemeanor involving moral turpitude, as shown by a certified copy of the court judgment of conviction.

f) If a PMHC contests the Department's decision regarding the denial or revocation of the agreement, it can request a hearing pursuant to 89 Ill. Adm. Code 5087-Section-259-279 by providing written notice of the request.

g) If the agency does not request a hearing, or, if after conducting a hearing, the Department determines that the agreement should be denied or revoked, the Department shall proceed with the revocation or denial of the formal agreement.

(Source: Amended at 23 Ill. Reg. 10837 effective AUG 23 1999)

# Section 258-270 Hearings regarding denial or revocation of formal agreement (Repealed)

a) An agreement may not be denied or revoked unless the agency is given written notice of the grounds for the Department's action.

b) The agency may appeal the Department's proposed action by making a written request to the Director for a hearing within 15 days after the postmark date of the Department's written notice.

c) The Department shall schedule a hearing within 20 working days after receipt of the request for appeal. The agency shall be notified by registered mail not less than 14 days prior to the date of the hearing. The notice shall include the date, time and place of the hearing and a short statement of the issues to be decided.

d) The hearing shall be conducted by an administrative law judge authorized by the Secretary to conduct such hearings.

e) Prior to the hearing date, the administrative law judge may hold a conference, either personally or by telephone, to resolve or narrow issues.

f) At the hearing, both parties may present written and oral evidence. The Department shall have the burden of proving that there was substantial evidence of non-compliance with these standards.

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Substantial evidence is such evidence as a reasonable person can accept as adequate to support a conclusion (i.e., it consists of somewhat less than a preponderance of evidence).

g) The administrative law judge shall issue his or her written decision within 15 working days after the hearing. The decision shall include a statement of facts about the appeal and the administrative law judge's conclusions. Copies of the decision shall be sent to the agency and the Department.

h) If the agency is not satisfied with the administrative law judge's decision, it may request a review of the decision by the Secretary or his or her designee. The request must be made in writing to the Secretary no later than 10 working days after the postmark date of the decision.

i) On receipt of the request for review, the Secretary or his or her designee shall review the administrative law judge's decision and copies of all documents considered at the hearing. Within 20 working days after receipt of the request for review, the Secretary or his or her designee shall issue a written decision upholding or reversing the administrative law judge's decision. Copies of the decision shall be sent to the Department and the agency.

j) The Secretary or his or her designee's decision shall constitute a final administrative decision.

k) If the agency does not request a hearing or, if after conducting a hearing, the Department determines that the agreement should be denied or revoked, the Department shall issue an order to that effect.

(Source: Repealed at 23 Ill. Reg. 10837 effective AUG 23 1999)

## DEPARTMENT OF HUMAN SERVICES

## NOTICE OF ADOPTED AMENDMENTS

1) Heading of the Part: WIC Vendor Management Code

2) Code Citation: 77 Ill. Adm. Code 672

3) Section Numbers: Adopted Action:  
672.600 Amended

4) Statutory Authority: Implementing and authorized by the WIC Vendor Management Act [410 ILCS 255].

5) Effective Date of Rulemaking: August 23, 1999

6) Does this rulemaking contain an automatic repeal date? No

7) Does this rulemaking contain incorporations by reference? No

8) A copy of the adopted amendment, including any material incorporated by reference, is on file in the agency's principal office and is available for public inspection.

9) Notice of Proposal Published in Illinois Register: April 16, 1999, 23 Ill. Reg. 4365

10) Has JCAR issued a Statement of Objections to this amendment? No

11) Difference between proposal and final version:

In the first sentence in Section 672.600, struck "thereto" and "such" and added "the".

12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreements issued by JCAR? Yes

13) Will this rulemaking replace an emergency amendment currently in effect?  
Yes

14) Are there any amendments pending on this Part? No

15) Summary and Purpose of Rulemaking: This rulemaking amends this Section to add references to the new "Administrative Hearings" rulemaking at 89 Ill. Adm. Code 508.

16) Information and questions regarding this adopted amendment shall be directed to:

Ms. Susan Weir, Bureau Chief  
Bureau of Administrative Rules and Procedures  
Department of Human Services

## DEPARTMENT OF HUMAN SERVICES

## NOTICE OF ADOPTED AMENDMENTS

100 South Grand Avenue East  
3rd Floor, Harris Bldg.  
Springfield, Illinois 62762  
217/785-9772

The full text of the adopted amendment begins on the next page:



DEPARTMENT OF HUMAN SERVICES  
NOTICE OF ADOPTED AMENDMENTS  
TITLE 77: PUBLIC HEALTH  
CHAPTER X: DEPARTMENT OF HUMAN SERVICES  
SUBCHAPTER I: MATERNAL AND CHILD HEALTH

PART 672  
WIC VENDOR MANAGEMENT CODE  
SUBPART A: GENERAL PROVISIONS

Section  
672.100 Definitions  
672.105 Incorporated and Referenced Materials  
672.110 Purpose  
672.115 Application of These Rules

SUBPART B: WIC VENDOR APPLICATION AND AUTHORIZATION PROCESS

Section  
672.200 Geographic Distribution and Number of Vendors  
672.205 Application Procedures  
672.210 Authorization Criteria and Procedures  
672.215 WIC Food List and Quantities  
672.220 Criteria for Denial of Authorization  
672.225 Denial of Authorization

SUBPART C: WIC VENDOR EDUCATION

Section  
672.300 Initial WIC Retail Training by the Department  
672.305 Initial WIC Retail Training by a Vendor  
672.310 Annual WIC Retail Training Program  
672.315 Compliance Training Workshop (Repealed)

SUBPART D: WIC VENDOR AUTHORIZATION AND RESPONSIBILITIES

Section  
672.400 Authorization  
672.405 WIC Vendor Contract Requirement  
672.410 Expiration of WIC Vendor Authorization and Contract  
672.415 Food Instrument Processing  
672.420 Specifications for Rejection of Food Instruments  
672.425 WIC Retail Vendor Responsibilities  
672.430 Payment Obligation  
672.435 Conflict of Interest  
672.440 Unlawful Discrimination  
672.445 Amendments Resulting From a Change in Statute or Regulation  
672.450 Assignment or Transfer  
672.455 Civil Law Suits

DEPARTMENT OF HUMAN SERVICES  
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672.460 Voluntary Withdrawal from the WIC Vendor Contract  
672.465 Notices

SUBPART E: WIC VENDOR COMPLIANCE AND SANCTIONS

Section  
672.500 Compliance Monitoring Inspections  
672.505 Violations  
672.510 WIC Vendor Sanctions  
672.515 Criteria for Termination or Suspension of Authorization, Prohibition, and/or Fine Assessment  
672.520 Breach of Contract  
672.525 Notice of Violation (Repealed)

SUBPART F: RULES OF PRACTICE AND PROCEDURES IN ILLINOIS WIC RETAIL VENDOR ADMINISTRATIVE HEARINGS

Section  
672.600 Hearings  
672.605 Parties to Hearings (Repealed)  
672.610 Appearance and Representation of a Party  
672.615 Commencement of an Action (Repealed)  
672.620 Motions (Repealed)  
672.625 Discovery (Repealed)  
672.630 Form of Papers (Repealed)  
672.635 Service (Repealed)  
672.640 Pre-Hearing Conferences (Repealed)  
672.645 Conduct of Hearings (Repealed)  
672.650 Subpoenas (Repealed)  
672.655 Burden of Proof (Repealed)  
672.660 Administrative Law Judge's Report and Final Decision (Repealed)  
672.665 Records of Proceedings (Repealed)  
672.670 Miscellaneous (Repealed)

APPENDIX A Illinois Regional Map

AUTHORITY: Implementing and authorized by the WIC Vendor Management Act [410 ILCS 255].

SOURCE: Adopted at 14 Ill. Reg. 19984, effective December 1, 1990; amended at 16 Ill. Reg. 17734, effective December 15, 1992; amended at 18 Ill. Reg. 2450, effective February 1, 1994; emergency amendment at 18 Ill. Reg. 13125, effective August 12, 1994, for a maximum of 150 days; amended at 19 Ill. Reg. 606, effective January 9, 1995; amended at 19 Ill. Reg. 16086, effective November 20, 1995; amended at 21 Ill. Reg. 3960, effective March 15, 1997; recodified from the Department of Public Health to the Department of Human Services at 21 Ill. Reg. 9323, emergency amendment at 22 Ill. Reg. 3127, effective January 22, 1998, for a maximum of 150 days; emergency expired on

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June 20, 1998; amended at 22 Ill. Reg. 18960, effective October 1, 1998; emergency amendment at 23 Ill. Reg. 4553, effective April 2, 1999, for a maximum of 150 days; amended at 23 Ill. Reg. 10843, effective Aug 23 1999.

SUBPART F: RULES OF PRACTICE AND PROCEDURES IN ILLINOIS WIC RETAIL VENDOR ADMINISTRATIVE HEARINGS

## Section 672.600 Hearings

Any sanctions imposed pursuant to Section 672.225 or 672.510 of this Part shall afford the adversely affected party ~~thereof~~ the opportunity to appeal the such action by requesting a hearing within fifteen-(15) calendar days after receipt of notice. Notices issued and hearings held shall be in accordance with 89 Ill. Adm. Code 508. ~~Until superseded by a rule promulgated by the Department of Human Services for hearings, notices issued and hearings held shall be in accordance with the Department of Public Health's Rules of Practice and Procedure in Administrative Hearings (47-111; Adm. Code 100)~~ except that when used for WIC hearings, the term "Department" shall mean the Department of Human Services rather than the Department of Public Health with the addition of the following provisions:

- a) An administrative hearing must be requested within fifteen-(15) calendar days after receipt of notice. Failure to request a hearing within this time frame shall constitute a waiver of the person's right to an administrative hearing.
- b) ~~Motions for a continuance shall be granted only in accordance with Section 2-1087 of the Code of Civil Procedure (33 Rev. Stat. 1991, ch. 110, par. 2-1087)(735-1668-5/2-1087); Motions for continuance shall be in writing and filed at least three (3) calendar days prior to the hearing. Such motions shall state the basis for the request and all steps taken to avoid the necessity of a continuance.~~
  - 1) Only one continuance each shall be allowed for the Vendor, Applicant and the Department. No continuance may be for more than fourteen (14) calendar days.
  - 2) After one continuance has been granted to a party, an additional continuance may be granted to that party only if there is a bona fide emergency or "Act of God."
- c) The burden of proof rests with the Department in relation to all administrative actions initiated by the Department pursuant to Section 672.510.
- d) The burden of proof rests with the Applicant as to all administrative actions initiated upon a petition for hearing filed by an Applicant after the denial of Authorization under Section 672.225.
- e) ~~Construction of Rules: This Part shall not be construed to abrogate, modify or limit any rights, privileges or immunities granted or protected by the Constitution or laws of the United States or the Constitution or laws of the State of Illinois in case of any conflict between this Part and the WIC Vendor Management Act; the terms of the~~

## DEPARTMENT OF HUMAN SERVICES

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~~latter shall control in case of any conflict between this Part and Article II of the Code of Civil Procedure or the Supreme Court Practice Rules; the terms of this Part shall control.~~  
 f) ~~Weaver; Compliance with any of the provisions of Subpart F of this Part or with any or all provisions of the IAPA regarding contested cases may be waived by written stipulation of all parties.~~

(Source: Amended at 23 Ill. Reg. 10843, effective Aug 23 1999.)

DEPARTMENT OF PUBLIC HEALTH  
NOTICE OF ADOPTED AMENDMENTS

- 1) Heading of the Part: Control of Communicable Diseases Code
- 2) Code Citation: 77 Ill. Adm. Code 690
- 3) Section Numbers:  
690.110  
690.720  
690.1010  
Adopted Action:  
Amendment  
Repealed  
Amendment
- 4) Statutory Authority: Implementing the Infant Eye Disease Act [410 ILCS 215] and the Communicable Disease Report Act [745 ILCS 45], and implementing and authorized by the Department of Public Health Act [20 ILCS 2305].
- 5) Effective Date of Amendments: August 20, 1999
- 6) Does this rulemaking contain an automatic repeal date? No
- 7) Does this rulemaking contain any incorporations by reference? No
- 8) A copy of the adopted amendments, including any material incorporated by reference, is on file in the Department's principal office and is available for public inspection.
- 9) Date Notice of Proposed Rulemaking was Published in the Illinois Register:  
August 21, 1998; 22 Ill. Reg. 15171
- 10) Has the Joint Committee on Administrative Rules issued a Statement of Objection to this Rulemaking? No
- 11) Difference Between Proposal and Final Version: In Section 690.100, "77 Ill. Adm. Code" was added before "693.20" in five lines. In the same section, "690.720" was stricken and replaced by "77 Ill. Adm. Code 696.170" following "42) Tuberculosis".
- 12) Have all the changes agreed upon by the agency and the Joint Committee been made as indicated in the agreement letter issued by the Joint Committee? Yes
- 13) Will the rulemaking replace an emergency amendment currently in effect?  
No
- 14) Are there any other amendments pending on this Part? No
- 15) Summary and Purpose of Amendments: This rulemaking repeals from this Part all requirements concerning tuberculosis reporting and control. New comprehensive rules for the control and reporting of tuberculosis (77 Ill. Adm. Code 696) that replace Section 690.720 were adopted by the

DEPARTMENT OF PUBLIC HEALTH  
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- 16) Information and questions regarding these adopted amendments shall be directed to:  
  
Department.  
  
Paul Thompson  
Division of Legal Services  
535 West Jefferson  
Springfield, Illinois 62761  
(217)782-2043

The full text of the adopted amendments begins on the next page:

DEPARTMENT OF PUBLIC HEALTH  
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TITLE 77: PUBLIC HEALTH  
CHAPTER I: DEPARTMENT OF PUBLIC HEALTH  
SUBCHAPTER k: COMMUNICABLE DISEASE CONTROL AND IMMUNIZATIONS

PART 690  
CONTROL OF COMMUNICABLE DISEASES CODE  
SUBPART A: REPORTABLE DISEASES AND CONDITIONS

Section  
690.100 Diseases and Conditions  
690.110 Diseases Repealed From This Part

SUBPART B: REPORTING

Section  
690.200 Reporting

SUBPART C: DETAILED PROCEDURES FOR THE CONTROL OF  
COMMUNICABLE DISEASES

Section  
690.290 Acquired Immunodeficiency Syndrome (AIDS) (Repealed)  
690.300 Amebiasis (Reportable by mail or telephone as soon as possible,  
within 7 days)  
690.310 Animal Bites (Reportable by mail or telephone as soon as possible,  
within 7 days)  
690.320 Anthrax (Reportable by telephone as soon as possible, within 24  
hours)  
690.325 Blastomycosis (Reportable by mail or telephone as soon as possible,  
within 7 days)  
690.330 Brucellosis (Reportable by mail or telephone as soon as possible,  
within 7 days)  
690.340 Chancroid (Repealed)  
690.350 Chickenpox (Reportable by mail or telephone as soon as possible,  
within 7 days)  
690.360 Cholera (Reportable by telephone as soon as possible, within 24  
hours)  
690.365 Cryptosporidiosis (Reportable by mail or telephone as soon as  
possible, within 7 days)  
690.370 Diarrhea of the Newborn (Reportable by telephone as soon as possible,  
within 24 hours)  
690.380 Diphtheria (Reportable by telephone as soon as possible)  
690.390 Encephalitis (Reportable by mail or telephone as soon as possible,  
within 7 days)  
690.400 Escherichia coli Infections Due to Serotype 0157:H7, Including  
Complications Such as Hemolytic Uremic Syndrome (Reportable by mail  
or telephone as soon as possible, within 7 days)

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690.410 Foodborne or Waterborne Illness (Reportable by telephone as soon as  
possible, within 24 hours)  
690.420 Giardiasis (Reportable by mail or telephone as soon as possible,  
within 7 days)  
690.430 Gonorrhea (Repealed)  
690.440 Granuloma Inguinale (Repealed)  
690.450 Hepatitis, Viral (Hepatitis A, Hepatitis B (Cases and Carriers),  
non-A/non-B Hepatitis, Hepatitis Unspecified (Reportable by mail or  
telephone as soon as possible, within 7 days))  
690.460 Histoplasmosis (Reportable by mail or telephone as soon as possible,  
within 7 days)  
690.470 Intestinal Worms (Reportable by mail or telephone as soon as  
possible, within 7 days)  
690.475 Legionnaires' Disease (Legionellosis) (Reportable by mail or  
telephone as soon as possible, within 7 days)  
690.480 Leprosy (Hansen's Disease) (Infectious and non-infectious cases are  
reportable) (Reportable by mail or telephone as soon as possible,  
within 7 days)  
690.490 Leptospirosis (Reportable by mail or telephone as soon as possible,  
within 7 days)  
690.495 Listeriosis (Reportable by mail or telephone as soon as possible,  
within 7 days)  
690.500 Lymphogranuloma Venereum (Lymphogranuloma Inguinale Lymphothia  
Venereum) (Repealed)  
690.505 Lyme Disease (Reportable by mail or telephone as soon as possible,  
within 7 days)  
690.510 Malaria (Reportable by mail or telephone as soon as possible, within  
7 days)  
690.520 Measles  
690.530 Meningitis and Other Invasive Disease Due to Neisseria meningitidis  
or Haemophilus influenzae (Reportable by telephone as soon as  
possible, within 24 hours), Meningitis Due to Other Bacteria, Fungi  
and Protozoa, and Aseptic Meningitis (Reportable by mail or telephone  
as soon as possible, within 7 days)  
690.540 Meningococcemia (Reportable by telephone as soon as possible)  
(Repealed)  
690.550 Mumps  
690.560 Ophthalmia Neonatorum (Gonococcal) (Reportable by mail or telephone  
as soon as possible, within 7 days)  
690.570 Plague (Reportable by telephone as soon as possible, within 24 hours)  
690.580 Poliomyelitis (Reportable by telephone as soon as possible)  
690.590 Psittacosis (Ornithosis) (Reportable by mail or telephone as soon as  
possible, within 7 days)  
690.600 Rabies, Human (Reportable by telephone as soon as possible, within 24  
hours)  
690.610 Rocky Mountain Spotted Fever (Reportable by mail or telephone as soon  
as possible, within 7 days)  
690.620 Rubella (German Measles) (Including Congenital Rubella Syndrome)



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- 690-630 Salmonellosis (Other than Typhoid Fever) (Reportable by mail or telephone as soon as possible, within 7 days)
- 690-640 Shigellosis (Reportable by mail or telephone as soon as possible, within 7 days)
- 690-650 Smallpox (Reportable by telephone as soon as possible, within 24 hours)
- 690-660 Staphylococcal Infections Occurring In Infants Under 28 days of Age Within a Health Care Institution or With Onset After Discharge (Reportable by mail or telephone as soon as possible, within 7 days)
- 690-670 Streptococcal Infections (due to Group A streptococci, including pharyngitis, rheumatic fever, acute glomerulonephritis, scarlet fever and invasive disease) (Reportable by mail or telephone as soon as possible, within 7 days)
- 690-680 Syphilis (Repealed)
- 690-690 Tetanus
- 690-700 Toxic Shock Syndrome (Reportable by mail or telephone as soon as possible, within 7 days)
- 690-710 Trachoma
- 690-720 Trichinosis (Trichinellosis) (Reportable by mail or telephone as soon as possible, within 7 days)
- 690-720 Tuberculosis (Repealed)
- 690-725 Tularemia (Reportable by mail or telephone as soon as possible, within 7 days)
- 690-730 Typhoid Fever (Reportable by telephone as soon as possible, within 24 hours)
- 690-740 Typhus (Reportable by telephone as soon as possible)
- 690-750 Whooping Cough (Pertussis)

## SUBPART D: DEFINITIONS

## Definition of Terms

## SUBPART E: GENERAL PROCEDURES

- Section 690-1000 General Procedures for the Control of Communicable Diseases
- 690-1010 Incorporated Materials

## SUBPART F: SEXUALLY TRANSMITTED DISEASES (Repealed)

- Section 690-1100 The Control of Sexually Transmitted Diseases (Repealed)

## SUBPART G: COMMUNICABLES FOR WHEN DEATH OCCURS FROM SEXUALLY TRANSMITTED DISEASES

## Section

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- 690-1200 Death of a Person Who Had a Known or Suspected Communicable Disease
- 690-1210 Funerals

## EXHIBIT A Typhoid Fever Agreement (Repealed)

AUTHORITY: Implementing the Infant Eye Disease Act [410 ILCS 215] and the Communicable Disease Report Act [745 ILCS 45], and implementing and authorized by the Department of Public Health Act [20 ILCS 2305].

SOURCE: Amended July 1, 1977; emergency amendment at 3 Ill. Reg. 14, p. 7, effective March 21, 1979, for a maximum of 150 days; amended at 3 Ill. Reg. 52, p. 131, effective December 7, 1979; emergency amendment at 4 Ill. Reg. 21, p. 9, effective May 14, 1980, for a maximum of 150 days; amended at 4 Ill. Reg. 38, p. 183, effective September 9, 1980; amended at 7 Ill. Reg. 16183, effective November 23, 1983; codified at 8 Ill. Reg. 14273; amended at 8 Ill. Reg. 24135, effective November 29, 1984; emergency amendment at 9 Ill. Reg. 6331, effective April 18, 1985, for a maximum of 150 days; amended at 9 Ill. Reg. 9124, effective June 3, 1985; amended at 9 Ill. Reg. 11643, effective July 19, 1985; amended at 10 Ill. Reg. 10730, effective June 3, 1986; amended at 11 Ill. Reg. 7677, effective July 1, 1987; amended at 12 Ill. Reg. 10045, effective May 27, 1988; amended at 15 Ill. Reg. 11679, effective August 15, 1991; amended at 18 Ill. Reg. 10158, effective July 15, 1994; amended at 23 Ill. Reg. ~~10849~~ effective ~~July 20, 1999~~.

## SUBPART A: REPORTABLE DISEASES AND CONDITIONS

## Section 690.100 Diseases and Conditions

The following are declared to be contagious, infectious, communicable and dangerous to the public health and each suspected or diagnosed case shall be reported to the local health authority which shall subsequently report each case to the Illinois Department of Public Health. This listing includes those diseases and conditions reportable because of classification as communicable or sexually transmitted. Communicable diseases and conditions are reportable under this Part (77 Ill. Adm. Code 690) and sexually transmissible diseases and conditions are reportable under the "Control of Sexually Transmissible Diseases Code" (77 Ill. Adm. Code 693). (See Subpart B, Section 690.200)

## a) Class I

The following diseases shall be reported as soon as possible, but within 24 hours, to the local health authorities, which shall then report to the Department as soon as possible, but within 24 hours. The Section number associated with each of the listed diseases indicates the part under which the diseases are reportable. This interval applies to primary reporters identified in Section 690.200(a)(1) who are required to report to local health authorities and to local health authorities who are required to report to the Department.

Section

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- 1) Anthrax 690.320
- 2) Cholera 690.360
- 3) Diarrhea of the newborn 690.370
- 4) Diphtheria 690.380
- 5) Foodborne or waterborne illness 690.410
- 6) Measles 690.520
- 7) Meningitis and other invasive disease due to *Neisseria meningitidis* or *Haemophilus influenzae* 690.530(a)
- 8) Plague 690.570
- 9) Poliomyelitis 690.580
- 10) Rabies, human 690.600
- 11) Smallpox 690.650
- 12) Typhoid fever 690.730
- 13) Typhus 690.740
- 14) Whooping cough (pertussis) 690.750

b) Class II.  
The following diseases shall be reported as soon as possible, but within 7 days, to the local health authority which shall then report to the Department within 7 days. The Section number associated with each of the listed diseases indicates the Part under which the diseases are reportable.

- 1) Acquired immunodeficiency syndrome (AIDS) Section 77 Ill. Adm. Code 693.20
- 2) Anebiasis 690.300
- 3) Animal bites 690.310
- 4) Blastomycosis 690.325
- 5) Brucellosis 690.330
- 6) Chlamydia 77 Ill. Adm. Code 693.20
- 7) Chickenpox 690.350
- 8) Cryptosporidiosis 690.365
- 9) Encephalitis 690.390
- 10) *Escherichia coli* infections due to serotype 0157:H7\* 690.400
- 11) Giardiasis 690.420
- 12) Gonorrhea 77 Ill. Adm. Code 693.20
- 13) HIV infection 77 Ill. Adm. Code 693.20
- 14) Hepatitis, type A viral 690.450(a)
- 15) Hepatitis, type B viral (cases and carriers)\* 690.450(b)
- 16) Hepatitis, delta 690.450(c)
- 17) Hepatitis, viral unspecified 690.450(d)
- 18) Hepatitis, non-A/non-B 690.460
- 19) Histoplasmosis 690.460
- 20) Intestinal worms 690.470
  - A) Tapeworms 690.470(a)
  - B) Ascariasis 690.470(b)
- 21) Legionnaires' disease (legionellosis) 690.475
- 22) Leprosy 690.480
- 23) Leptospirosis 690.490

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- 24) Listeriosis 690.495
  - 25) Lyme disease 690.505
  - 26) Malaria\* 690.510
  - 27) Meningitis (due to bacteria, fungi or protozoa other than those listed in Class I) and aseptic meningitis 690.530(b) & (c)
  - 28) Mumps 690.550
  - 29) Ophthalmia neonatorum (gonococcal) 690.560
  - 30) Psittacosis\* 690.590
  - 31) Rocky Mountain spotted fever 690.610
  - 32) Rubella, including congenital rubella syndrome 690.620
  - 33) Salmonellosis\* (other than typhoid fever) 690.630
  - 34) Shigellosis\* 690.640
  - 35) Staphylococcal infections occurring in infants under 28 days of age (within a health care institution or with onset after discharge) 690.660
  - 36) Streptococcal infections (due to group A streptococci), including pharyngitis, rheumatic fever, acute glomerulonephritis, scarlet fever, and invasive disease\* 690.670
  - 37) Syphilis 77 Ill. Adm. Code 693.20
  - 38) Tetanus 690.690
  - 39) Toxic shock syndrome 690.695
  - 40) Trachoma 690.700
  - 41) Trichinosis 690.710
  - 42) Tuberculosis 77 Ill. Adm. Code 696.170698-728
  - 43) Tularemia 690.725
- \*Cases and carriers (when carriers are required to be reported) of these should be confirmed by appropriate laboratory tests before reporting.
- c) The occurrence of any increase in incidence of disease of unknown or unusual etiology should be reported, with major signs and symptoms listed.
- d) When an epidemic of a disease dangerous to the public health occurs, and present rules are not adequate for its control or prevention, more stringent requirements shall be issued by this Department.
- (Source: Amended at 23 Ill. Reg. 10849, effective Aug 20, 1999)

SUBPART C: DETAILED PROCEDURES FOR THE CONTROL OF COMMUNICABLE DISEASES

Section 690.720 Tuberculosis (Repealed)

a) Reporting

1) Information about Class III tuberculosis cases shall be reported on forms available from the local health authority or the Department; the report shall include demographic information

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diagnostic--test--result--treatment--regimens--outpatient supervision--and--information--about--the--person--preparing the report

- 2) All laboratories must report to the Department within 48 hours each smear positive for acid-fast bacilli and each culture from sputum, tissue or other body fluids positive for Mycobacterium tuberculosis if the specimen is the first positive from the patient known to the laboratory. Subsequent smears and cultures on the same patient must be reported to the local health authority or the Department. The local health authority within a county with 100 or more new Class III cases in the current or immediate past year may inform laboratories that all initial smear and culture reports must be sent to the local tuberculosis authority. If the case resides outside of the jurisdiction of the local tuberculosis authority, said authority shall send the report to the Department.

## b) Control of Case

- 1) Control techniques for tuberculosis as described in "Guidelines for Prevention of TB Transmission in Hospitals," U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control, Center for Prevention Services, Tuberculosis Control Division, Atlanta, Georgia, 30333 (revised April 1983) must be followed by all hospitals and other health care institutions when a person with contagious tuberculosis is in such institution. Contagious tuberculosis shall be considered present in a person who has acid-fast bacilli suggestive of tuberculosis found on a sputum smear and does not meet the criteria for noncontagiousness established in paragraph 3 of this Section. However, if the acid-fast bacilli present have been shown by culture to be a mycobacterium other than tuberculosis isolation of the individual is not required.

- 2) Modified isolation as defined in Section 690-900 is required for noninstitutionalized persons with contagious tuberculosis as defined above. Exemption from isolation is established by meeting the criteria defined in subsection 690-920(b)(3). Persons who fail to comply with specific isolation requirements shall be isolated by written order initiated by the local health authority or, in the absence of a local health authority, the Department or forms furnished by the Department. Release from isolation is permitted when the conditions of subsection 690-920(b)(3) below are satisfied.

- 3) A tuberculosis patient receiving a regimen of drugs to which his or her organisms are sensitive shall be considered noncontagious if:

- A) there is a substantial decrease in the number of acid-fast bacilli as demonstrated by few bacilli found in the sputum  
B) systemic symptoms have subsided and  
C) radiological improvement has begun in patients where

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- 4) Tuberculosis patients shall receive care, whether in an institution or at an outpatient service, from personnel knowledgeable about the disease, its transmission and treatment, and capable of teaching precautionary measures to patients. The attending physician shall consider treatment regimens recommended in "Treatment of Tuberculosis in Adults and Children," American Thoracic Society Medical Section of the American Lung Association. The guidelines are available at the Department for inspection and copying. Treatment recommended by later amendments or editions are not included in the rule.

## c) Control of Contacts

- 1) Quarantine of contacts is not required.  
2) Investigation of contacts shall be managed according to recommendations outlined in "Control of Tuberculosis," American Thoracic Society Medical Section of the American Lung Association. All contacts shall be skin tested by the Mantoux method utilizing five tuberculin units of purified protein derivative administered intradermally. Those with significant skin test reactions or symptoms compatible with pulmonary tuberculosis shall have an x-ray and other medical examinations determined by the attending physician. If there is no evidence of disease, the attending physician must consider preventive therapy. (See subsection 690-720(b)(4)).

## d) General Measures

- 1) Where these regulations require a skin test for tuberculosis, 5 tuberculin units of purified protein derivative shall be administered intradermally using the Mantoux method. A significant reaction shall be considered to exist where there is an area of induration 10 mm or more in diameter or where the attending physician and local health authority suspect tuberculosis on the basis of disease or exposure and there is an area of induration 5 mm or more in diameter. Where there is documentation of a previous significant skin test reaction or record of previous tuberculosis infection or treatment, no skin test is required.

- 2) Residents of institutions licensed by the Department as long term care facilities shall show freedom from tuberculosis by a tuberculin skin test administered within 90 days prior to or 72 hours after admission. If the reaction is nonsignificant, a second skin test shall be done within 3 weeks. If the first or second skin test is significant or tuberculosis is suspected at any time, the attending physician or local health authority must cause follow-up to be done including x-rays, cultures and/or sputum smears.

- 3) Residents of prisons shall have a tuberculin skin test upon admission and upon transfer unless the record of test is verified after transfer. The same follow-up procedures defined in

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- a) The following materials are incorporated or referenced in this Part:
- 1) "CDC Guidelines for Isolation Precautions in Hospitals", U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control, Atlanta, Georgia 30333, HHS Publication No. (CDC) 83-8314 (1983).
  - 2) "Recommendations for Prevention of HIV Transmission in Health-Care Settings", U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control, Atlanta, Georgia 30333 (Morbidity and Mortality Weekly Report (MMWR), August 21, 1987, Vol. 36, No. S2, pages 35-185).
  - 3) "Protection Against Viral Hepatitis", Recommendations of the Immunization Practices Advisory Committee, U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control, Atlanta, Georgia 30333 (Morbidity and Mortality Weekly Report (MMWR), February 9, 1990, Vol. 39, No. RR-2, pages 1-26).
  - 4) "Guidelines for Prevention of TB Transmission in Hospitals," U.S. Department of Health and Human Services, Centers for Disease Control, Atlanta, Georgia 30333. (Revised April 1983) (See Section 690.720).
  - 5) "Treatment of Tuberculosis--infection-in-Adults-and-Children" (1987)--and--"Control-of-Tuberculosis" (1983)--American Thoracic Society Medical Section--of--the--American--Hung--Association--of--Internists--in--South--Christmas--Sea-Drive--Springfield--Illinois 62783---(See-Section-690-720)
  - 5) 6) "General Recommendations on Immunization," Recommendations of the Advisory Committee on Immunization Practices, U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control, Atlanta, Georgia 30333 (Morbidity and Mortality Weekly Report (MMWR), January 28, 1994, Vol. 43, No. RR-1, pages 1-38). (See Sections 690.620(d)(1), 690.690(d)(1) and 690.750(a))
  - 6) 7) Joint Advisory Notice, Department of Labor/Department of Health and Human Services, HBV/HIV, Federal Register, Vol. 52, No. 210, pp. 41818-41823, October 30, 1987. (See Section 690.450)
  - 7) 8) "Diseases Transmitted by Foods", U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control, Atlanta, Georgia 30333 (1982, Second Edition).
  - 8) 9) "Recommendations for Preventing Transmission of Human Immunodeficiency Virus and Hepatitis B Virus to Patients During Exposure-prone Invasive Procedures", U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control, Atlanta, Georgia 30333 (Morbidity and Mortality Weekly Report (MMWR), July 12, 1991, Vol. 40, No. RR-8, pages 1-9).
  - 9) 10) "Hepatitis B Virus: A Comprehensive Strategy for Eliminating Vaccination", Recommendations of the Immunization Practices Advisory Committee, U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control, Atlanta,

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- subsection--690-720(d)(4)(B)--must-be--done--if--significant--test results--are--found.
- 4) Every hospital--child-care-center--foster-home--family--and--long-term-care-facility--shall--have--a--tuberculosis--surveillance-program which--shall--include--the--following:
- A) Each employee--shall--have--a--record--of--tuberculin--skin--test within--90--days--prior--to--or--within--90--days--after--beginning employment--if--the--first--test--result--is--nonsignificant--a second--test--shall--be--given--within--9--weeks--after--the--first test--the--result--of--the--second--test--shall--be--used--in determining--the--need--for--further--examinations--and--treatment
  - B) All employees--with--significant--skin--test--reactions--or symptoms--compatible--with--pulmonary--tuberculosis--shall--have an x-ray--and--other--medical--examinations--as--determined--by--the attending--physician--if--there--is--evidence--of--disease bacteriological--studies--must--be--performed--coupled--with other--examinations--as--determined--by--the--attending--physician if--there--is--no--evidence--of--disease--the--attending--physician must--consider--preventive--therapy--in--accordance--with--American Thoracic--Society--guidelines--(See--subsection--690-720(b)(7)).
  - C) Tuberculin--skin--tests--shall--be--repeated--at--least--every--6 months--in--the--following--persons--without--a--documented significant--test--reaction:
    - i) Hospital--and--clinic--employees--who--are--assigned--to provide--direct--care--to--tuberculosis--patients--and
    - ii) Employees--in--nursing--home--or--intensive--care respiratory--therapy--and--similar--units--where--during--the past--twelve--months--a--case--of--class--III--tuberculosis has--been--newly--diagnosed--among--employees--residents--or--patients;
  - 5) Employees--in--schools--shall--have--a--tuberculin--skin--test--not--more than--90--days--preceding--time--of--first--school--employment--all employees--with--significant--skin--test--reactions--medical histories--or--symptoms--compatible--with--pulmonary--tuberculosis shall--have--an x-ray--and--other--medical--examinations--as--determined by--the--attending--physician--if--there--is--evidence--of--disease bacteriological--studies--must--be--performed--in--addition--to--any other--examinations--done--if--there--is--no--evidence--of--disease--the attending--physician--must--consider--preventive--therapy--for--the person--with--a--significant--skin--test--reaction:

(Source: Repealed at 23 Ill. Reg. 10849, effective AUG 20 1989)

SUBPART E: GENERAL PROCEDURES

Section 690.1010 Incorporated Materials



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Georgia 30333 (Morbidity and Mortality Weekly Report (MMWR), November 22, 1991, Vol. 40, No. RR-13, pages 1-25).

10) ~~11)~~ ~~Haemophilus b~~ ~~Conjugate Vaccines for Prevention of~~ ~~Haemophilus influenzae Type b Disease Among Infants and Children~~ ~~Two Months of Age and Older", Recommendations of the Immunization Practices Advisory Committee, U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control, Atlanta, Georgia 30333 (Morbidity and Mortality Weekly Report (MMWR), January 11, 1991, Vol. 40, No. RR-3, pages 1-7).~~

11) ~~12)~~ ~~"Rabies Prevention - United States, 1991" Recommendations of the Immunization Practices Advisory Council, U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control, Atlanta, Georgia 30333 (Morbidity and Mortality Weekly Report (MMWR), March 22, 1991, Vol. 40, No. RR-3, pages 1-19).~~

b) All citations to federal regulations in this Part concern the specified regulations in the 1987 Code of Federal Regulations, unless another date is specified.

c) All incorporations by reference of federal regulations and the standard of nationally recognized organizations refer to the regulations and standards on the date specified and do not include any additions or deletions subsequent to the date specified.

(Source: Amended at 23 Ill. Reg. 10849, effective AUG 20 1999.)

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## NOTICE OF EMERGENCY RULES

1) Heading of the Part: Economic Development through a Growing Economy Program (EDGE)

2) Code Citation: 14 Ill. Adm. Code 527

3) <u>Section Numbers:</u>	<u>Emergency Action:</u>
527.10	New Section
527.20	New Section
527.30	New Section
527.40	New Section
527.50	New Section
527.60	New Section
527.70	New Section
527.80	New Section
527.90	New Section
527.100	New Section
527.110	New Section

4) Statutory Authority: Implementing Section 5-15 and authorized by Section 5-80 of the Economic Development for a Growing Economy Tax Credit Act [35 ILCS 10/5-15 and 5-80] (see Public Act 91-476).

5) Effective Date of Rules: August 16, 1999

6) If these emergency rules are to expire before the end of the 150-day period, please specify the date on which it is to expire: N/A

7) Date filed with the Index Department: August 16, 1999

8) A copy of the emergency rule, including any material incorporated by reference, is on file in the agency's principal office and is available for public inspection.

9) Reason for Emergency: This rulemaking is in the public interest as it will help the State compete for firms that offer good jobs for Illinois workers. Through this rulemaking, the Illinois Department of Commerce and Community Affairs is implementing a new statute. The Illinois Department of Commerce and Community Affairs is required to accept applications from interested businesses as of the effective date of the Economic Development for a Growing Economy Act.

10) A Complete Description of the Subjects and Issues Involved: This new proposed rulemaking will help the State to compete for the attraction of firms that offer good jobs for Illinois workers by offering those firms that meet the eligibility criteria a tax credit. Firms which create at least 25 new jobs and invest at least \$5,000,000 in capital improvements in Illinois would be eligible for an Economic Development for a Growing Economy (EDGE) tax credit for up to 10 years.

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- 11) Are there any proposed rules pending on this Part: No
- 12) Statement of Statewide Policy Objectives: This rulemaking does not create or expand a State mandate as defined in Section 3(b) of the State Mandates Act [30 ILCS 805/3(b)].

- 13) Information and questions regarding these rules shall be directed to:

Mr. Eric Rinehart, Acting Manager  
Policy Development, Planning and Research  
Department of Commerce and Community Affairs  
620 East Adams Street, 6th Floor  
Springfield, Illinois 62701  
(217) 524-5696  
T.D.D.: (217) 785-6055

The full text of the Emergency Rules begins on the next page:

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NOTICE OF EMERGENCY RULES

TITLE 14: COMMERCE  
SUBTITLE C: ECONOMIC DEVELOPMENT  
CHAPTER 1: DEPARTMENT OF COMMERCE AND COMMUNITY AFFAIRS  
PART 527  
ECONOMIC DEVELOPMENT THROUGH A GROWING ECONOMY PROGRAM (EDGE)

Section  
527.10 Purpose  
EMERGENCY  
527.20 Definitions  
EMERGENCY  
527.30 Eligibility Determination  
EMERGENCY  
527.40 Form of Application  
EMERGENCY  
527.50 Application Review  
EMERGENCY  
527.60 Application Denial/Approval  
EMERGENCY  
527.70 Determination of Amount and Term of the Credit  
EMERGENCY  
527.80 Tax Credit Agreement  
EMERGENCY  
527.90 Certificate of Verification  
EMERGENCY  
527.100 Noncompliance with the Agreement  
EMERGENCY  
527.110 Fees  
EMERGENCY

AUTHORITY: Implementing Section 5-15 and authorized by Section 5-80 of the Economic Development for a Growing Economy Tax Credit Act [35 ILCS 10/5-15 and 5-80] (see Public Act 91-476).

SOURCE: Emergency rules adopted at 23 Ill. Reg. **10862**, effective August 16, 1999, for a maximum of 150 days.

Section 527.10 Purpose  
EMERGENCY

*The Department shall make Credit awards under the Act to foster job creation and retention in Illinois. [35 ILCS 10/5-15(a)(1)]*

Section 527.20 Definitions  
EMERGENCY

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The following definitions are applicable to this Part.

"Act" means the Economic Development for a Growing Economy Tax Credit Act [35 ILCS 10].

"Agreement" means the Tax Credit Agreement created pursuant to 35 ILCS 10/5-50.

"Capital Improvements" shall include the purchase, renovation, rehabilitation, or construction of permanent tangible land, buildings, structures, equipment and furnishings in an approved Project sited in Illinois and in expenditures for goods or services that are normally capitalized, including organizational costs and research and development costs incurred in Illinois. For land, buildings, structures and equipment that are leased, the lease must equal or exceed the term of the Tax Credit Agreement and the cost of the property shall be determined from the present value, using the corporate interest rate prevailing at the time of the application, of the lease payments.

"Credit" means the amount agreed to between the Department and Applicant under the Act, but not to exceed the Incremental Income Tax attributable to the Applicant's Project. [35 ILCS 10/5-15]

"Full-time Employee" means an individual who is employed for consideration for at least 35 hours each week or who renders any other standard of service generally accepted by industry custom or practice as full-time employment. [35 ILCS 10/5-5] Annually scheduled periods for inventory or repair, vacations, holidays and paid time for sick leave, vacation or other leave shall be included in this computation of full time employment.

"Incremental Income Tax" means the total amount withheld during the taxable year from the compensation of New Employees under Article 7 of the Illinois Income Tax Act [35 ILCS 5/Art. 7] arising from employment at a project that is the subject of an Agreement. [35 ILCS 10/5-5]

"New Employee" means a Full-time Employee first employed by a Taxpayer in the project that is the subject of an Agreement and who is hired after the Taxpayer enters into the Tax Credit Agreement.

The term "New Employee" does not include:

- an employee of the Taxpayer who performs a job that was previously performed by another employee, if that job existed for at least 6 months before hiring the employee;
- an employee of the Taxpayer who was previously employed in

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*Illinois by a Related Member of the Taxpayer and whose employment was shifted to the Taxpayer after the Taxpayer entered into the Tax Credit Agreement;*

an employee of the Taxpayer who was previously employed in Illinois by the Taxpayer and whose employment was shifted to the Taxpayer Project after the Taxpayer entered into the Tax Credit Agreement; or

a child, grandchild, parent, or spouse, other than a spouse who is legally separated from the individual, of any individual who has a direct or an indirect ownership interest of at least 5% in the profits, capital, or value of the Taxpayer.

An employee may be considered a New Employee under the Agreement if the employee performs a job that was previously performed by an employee who was treated under the Agreement as a New Employee and promoted by the Taxpayer to another job. [35 ILCS 10/5-5]

An employee shall be considered a New Employee under the Agreement if the employee fills a job vacancy that had been continuously vacant for the 184 day period immediately preceding the date of the Agreement. A job vacancy whose incumbent is on approved leave, is locked out or is on strike is not a vacancy.

"Placed in Service" means the state or condition of readiness and availability for a specifically assigned function.

"Project" means a for-profit economic development activity or activities at a single site, or at multiple sites if the economic activities are vertically integrated.

"Project Costs" includes cost of the Project incurred or to be incurred by the Taxpayer including capital investment, including, but not limited to, equipment, buildings, or land; infrastructure development; debt service, except refinancing of current debt; research and development; job training and education; lease costs or relocation costs, but excludes the value of State incentives, including discretionary tax credits, discretionary job training grants, or the interest savings of below market rate loans. [35 ILCS 10/5-30]

"Taxpayer" means an individual, corporation, partnership, or other entity that has any Illinois Income Tax liability. [35 ILCS 10/5-15]

## Section 527.30 Eligibility Determination

## EMERGENCY

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- a) Any Taxpayer that is engaged in interstate or intrastate commerce for the purpose of manufacturing, processing, assembling, warehousing, or distributing products, conducting research and development, providing tourism services, or providing services in interstate commerce, office industries, or agricultural processing, but excluding retail, food, health, or professional services is an Eligible Business.
- b) A Taxpayer who is operating an Eligible Business that is located, or plans to be located, in the State of Illinois may be an "Applicant." Applicant does not include a taxpayer who closes or substantially reduces an operation at one location in the State and relocates substantially the same operation to another location in the State.
- 1) This does not prohibit a Taxpayer from expanding its operations at another location in the State, provided that existing operations of a similar nature located within the State are not closed or substantially reduced within the last two years. For the purpose of this Section, "substantially reduced" means a reduction in employment of 33.33% or more.
- 2) This also does not prohibit a Taxpayer from moving its operations from one location in the State to another location in the State for the purpose of expanding the operation, provided that the Department determines that the expansion cannot reasonably be accommodated within the municipality in which the business is located, or in the case of a business located in an incorporated area of the county, within the county in which the business is located. A determination under this subsection (b)(2) shall be made by the Department after conferring with the chief elected official of the municipality or county and taking into consideration any evidence offered by the municipality or county regarding the ability to accommodate expansion within the municipality or county. [35 ILCS 10/5-5]
- c) In order to qualify for Credits under the Act, an Applicant's Project must:
- involve an investment of at least \$5,000,000 in capital improvements to be placed in service and employ at least 25 New Employees within the State as a direct result of the Project; or
  - involve an investment at a level specified by the Department in capital improvements to be placed in service; employ New Employees within the State at a level specified by the Department; and provide a substantial economic benefit to the State [35 ILCS 10/5-20], as determined by the Department.
- d) The Applicant must demonstrate that if not for the Credit the Project would not occur in Illinois by providing documentation evidencing that:
- the Applicant has multi-state location options and could reasonably and efficiently locate outside of the State; or
  - at least one other State is being considered for the Project; or
  - receipt of the Credit is a major factor in the Applicant's decision and that, without the Credit, the Applicant likely would not have proceeded with the Project.

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- a) not create new jobs in Illinois; or
- 4) the Credit is essential to the Applicant's decision to create or retain new jobs in the State.
- e) Identify a cost differential, using best available data, in the projected costs for the Applicant's Project compared to the costs in the competing state, including the impact of the competing state's incentive programs [35 ILCS 10/5-25], for example, by demonstrating:
- specific costs of labor, utilities, taxes and other costs of an out-of-state site or the industry's cost structure in the competing region; or
  - specific cost differential due to the impact of a competing state's incentive programs.

## Section 527.40 Form of Application

## EMERGENCY

- a) Applications will be accepted at any time during the year. The Department will provide interested Applicants with an application package upon request. Submittal of an application does not commit the Department to award assistance or to pay any costs, including the application fee, incurred by the Applicant in the preparation of an application.
- b) Any Taxpayer proposing a Project located or planned to be located in Illinois may request consideration of its Project, by application to the Department, in which the Applicant states its intent to make at least a specified level of investment and intends to hire or retain a specified number of full-time employees at a designated location in Illinois. [35 ILCS 10/5-20(a)]
- c) Written applications will be required and must be submitted on the standard application form provided by the Department. Applications shall be submitted to the Department office location identified on the application. The application shall include:
- Application Cover Page - containing name, address, and telephone number of applicant; key contact and title; total number of new employees to be hired; company Federal Employer Identification Number (F.E.I.N.); Standard Industrial Code (S.I.C.); if available, Illinois Unemployment Insurance Account Code; State Senate District number; State Representative District number; authorized signatures; and related information.
  - Project Summary - a detailed description of the Project that is to be the subject of the Agreement. [35 ILCS 10/5-50(1)]
  - Site Map - an outline of the general location of the Project on a site map, including the location of any flood plain areas and wetland areas.
  - Jobs Impact - a detailed description of the number of New Employees to be hired and the occupation and payroll of the full-time jobs to be created [35 ILCS 10/5-50(9)] as a result of the Project, and a schedule of anticipated starting dates of the



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- new hires.
- 5) Capital Improvements Planned - a detailed description of the investment the Taxpayer will make in Capital Improvements, and the designated location in Illinois for the investment. [35 ILCS 10/5-50(10)] This shall include but not be limited to a description (or specifications or lists) of the planned Capital Improvements demonstrating the investment is qualified; documentation to substantiate the value of the investment (value of Capital Improvements as provided by appraisers, vendors, contractors and/or architects and engineers); and a schedule regarding when the eligible investment will be placed in service.
  - 6) Total Project Costs - a detailed description of total Project Cost as defined in Section 527.10.
  - 7) Competitive Requirements of the Project - evidence supplied by the Applicant demonstrating that, if not for the Credit, the Project would not occur in Illinois; which may be demonstrated by any means, including, but not limited to:
    - a) evidence the Applicant has multi-state location options and could reasonably and efficiently locate outside of the State, for example, documentation indicating firm interest in alternative non-Illinois locations, such as a prospective offer or letter; or
    - b) demonstration that at least one other state is being considered for the Project, for example, disclosure of sites of out-of-state location options that would receive the proposed investment and job creation in the event the business is not designated, which may include documentation such as incentive letters or prospective offers from other states; or
  - c) evidence the receipt of the Credit is a major factor in the Applicant's decision and that, without the Credit, the Applicant likely would not create new jobs in Illinois, for example, an affidavit signed by the Applicant stating that the Credit is a precondition to the Applicant's decision to create new jobs in the State; or
  - d) demonstration that receiving the Credit is essential to the Applicant's decision to create or retain new jobs in the State [35 ILCS 10/5-25(b)], for example, an affidavit signed by the Applicant stating that without the Credit the Applicant would not be inclined to create new jobs in the State.
  - 8) Cost Differential - documentation of a cost differential of alternative out-of-state sites, such as written information on non-Illinois sites under consideration, comparison of industry costs in other states, cost/benefit analyses of moving or closing the business, financial statements, internal memoranda, or any other financial documentation evidencing cost differential.
  - 9) Financial Statement - a balance sheet and a profit and loss

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- statement of the Taxpayer for the last two years.
- 10) Other Provisions - any other provisions or information the Department determines is necessary to facilitate the Department's evaluation of the application.
  - d) The Applicant is responsible for the accuracy of all data, information and documentation included in its application. Once submitted, applications shall become the property of the Department.
  - e) Applications will not be evaluated unless the application fee has been included.
  - f) Any documentary materials or data made available or received by any member of a Business Investment Committee ("Committee") of the Illinois Economic Development Board or any agent or employee of the Department shall be deemed confidential and shall not be deemed public records to the extent that the materials or data consist of trade secrets, commercial or financial information regarding the operation of the business conducted by the Applicant for, or recipient of, any Tax Credit under the Act, or any information regarding the competitive position of a business in a particular field of endeavor. [35 ILCS 10/5-90(a)]

Section 527.50 Application Review  
EMERGENCY

- a) Prior to substantive evaluation of an application, the Department shall screen all applications to determine that all requirements of the application package have been addressed. Applicants will be notified of deficiencies in applications and given an opportunity to correct those deficiencies through submission of additional documentation.
- b) The Department shall evaluate applications in accordance with the plan for review that has been adopted by the Business Investment Committee for additional review. The plan of review shall determine that all of the following conditions exist:
  - 1) the Applicant's Project intends to make the required investment in the State and intends to hire the required number of New Employees in Illinois as a result of that Project.
  - 2) the Applicant's Project is economically sound and will benefit the people of the State of Illinois by increasing opportunities for employment and strengthen the economy of Illinois.
  - 3) that, if not for the Credit, the Project would not occur in Illinois, which may be demonstrated by any means, including, but not limited to, evidence the Applicant has multi-state location options and could reasonably and efficiently locate outside of the State, or demonstration that at least one other state is being considered for the Project, or evidence the receipt of the Credit is a major factor in the Applicant's decision and that, without the Credit, the Applicant likely would not create new jobs in Illinois, or demonstration that receiving the Credit is

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essential to the Applicant's decision to create or retain new jobs in the State.

4) a cost differential is identified, using best available data, in the projected costs for the Applicant's Project compared to the costs in the competing state, including the impact of the competing state's incentive programs. The competing state's incentive programs shall include state, local, private, and federal funds available.

5) the political subdivisions affected by the Project have committed local incentives with respect to the Project, considering local ability to assist.

6) awarding the Credit will result in an overall positive fiscal impact to the State, as certified by the Committee, using the best available data. [35 ILCS 10/5-25(b)]

7) if appropriate, an Applicant that has moved its operations from one political subdivision in the State to another political subdivision (and that has been determined by the Department to be an eligible Applicant) has demonstrated that it is not claiming a tax credit with respect to any jobs that the Taxpayer relocates from one site in Illinois to another site in Illinois.

c) The Department reserves the right to request the Committee to convene, make inquiries, and conduct studies in the manner and by the methods, it deems desirable, review information with respect to Applicants, and make recommendations on Projects to benefit the State. Recommendations that an Applicant's application for Credit should or should not be accepted shall occur within a reasonable time frame as determined by the nature of the application. [35 ILCS 10/5-25(b)]

## Section 57.60 Application Denial/Approval

## EMERGENCY

a) Applicants shall be notified in writing as to the Department's evaluation of all completed applications. If the Department denies an application for the Credit, it will specify the reasons for the denial in writing and allow the Applicant 30 days to amend and resubmit its application for evaluation. If the Applicant disagrees with the Department's decision it may seek relief through the process afforded in the Department's Administrative Hearing Rules set forth at 47 Ill. Adm. Code 10 (Review and Appeal Procedures).

b) The Department will negotiate a formal Agreement with Applicants determined to be eligible for the award of a Credit. For tax years beginning on or after January 1, 1999, a Taxpayer who has entered an Agreement under the Economic Development for a Growing Economy Tax Credit Act is entitled to a credit against the taxes imposed under Section 201(a) and (b) of the Illinois Income Tax Act [35 ILCS 5/201(a) and (b)] in an amount to be determined in the Agreement. [35 ILCS 5/211]

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Section 57.70 Determination of Amount and Term of the Credit  
EMERGENCY

a) The Department shall determine the amount and duration of the Credit awarded under the Act. The duration of the Credit may not exceed 10 taxable years. [35 ILCS 10/5-45] In determining the amount of the Credit that will be awarded for a qualified Project, the Committee shall provide guidance on, by means of a formal plan adopted by the Committee, and the Department shall take into consideration, the following factors:

1) The number and location of jobs created and retained in relation to the economy of the county where the projected investment is to occur.

2) The potential impact on the economy of Illinois.

3) The magnitude of the cost differential between Illinois and the competing state.

4) The incremental payroll attributable to the Project.

5) The capital investment attributable to the Project.

6) The amount of the average wage and benefits paid by the Applicant in relation to the wage and benefits of the area of the Project.

7) The costs to Illinois and the affected political subdivisions with respect to the Project.

8) The financial assistance that is otherwise provided by Illinois and the affected political subdivisions. [35 ILCS 10/5-40]

b) The Credit may be stated as a percentage of the Incremental Income Tax attributable to the Applicant's Project and may include a fixed limitation. [35 ILCS 10/5-45]

c) The Credit shall not exceed the Incremental Income Tax attributable to the Project that is the subject of an Agreement. [35 ILCS 10/5-15(d)]

d) The total amount of the Credit allowed during all tax years may not exceed the aggregate amount of costs incurred by the taxpayer during all prior tax years to the extent provided in the Agreement of Project Costs. [35 ILCS 10/5-30]

## Section 57.80 Tax Credit Agreement

## EMERGENCY

The Department and each Taxpayer whom the Department determines qualifies for a Credit under the Act shall enter into an Agreement that specifies terms and conditions regarding the provision of the Credit and defines the rights and responsibilities of the Taxpayer and the Department. Provisions that the Taxpayer will be contractually bound to comply with include, but are not limited to, the following:

a) A requirement that the Taxpayer shall maintain operations at the Project location that shall be stated as a minimum number of years not to exceed 10.

b) A specific method for determining the number of New Employees employed during a taxable year.

## DEPARTMENT OF COMMERCE AND COMMUNITY AFFAIRS

## NOTICE OF EMERGENCY RULES

- c) A requirement that the Taxpayer shall annually report to the Department the number of New Employees, the Incremental Income Tax withheld in connection with the New Employees, and any other information the Department requires to ensure compliance with applicable law.
- d) A requirement that the Department is authorized to verify with the appropriate State agencies information required to be reported by the Taxpayer.
- e) A requirement that the Taxpayer shall provide written notification to the Department not more than 30 days after the Taxpayer makes or receives a proposal that would transfer the Taxpayer's State tax liability obligations to a successor Taxpayer.
- f) A requirement that the Taxpayer shall provide written notification to the Department not more than 30 days after the Taxpayer determines that the minimum job creation or retention, employment payroll, or investment no longer is being or will be achieved or maintained as set forth in the terms and conditions of the Agreement.
- g) A provision that, if the total number of New Employees falls below a specified level, the allowance of Credit shall be suspended until the number of New Employees equals or exceeds the Agreement amount. [35 ILCS 10/5-50]
- h) Any other provisions that the Department determines are necessary to comply with the Act and other applicable State laws and administrative rules.

## Section 527.90 Certificate of Verification

## EMERGENCY

- a) The Taxpayer shall notify the Department on forms provided by the Department when the minimum eligible capital improvement investments have been placed in service and the minimum New Employee jobs have been created.
- b) The Taxpayer shall provide, for land and/or building acquisition, a copy of the purchase agreement; for building construction or renovation, a contractor's or architect's cost certification; for space rental, a rental/lease agreement.
- c) For a Taxpayer to be eligible for a certificate of verification, the Taxpayer shall provide proof as required by the Department prior to the end of each calendar year, including, but not limited to, attestation by the Taxpayer that:
  - 1) The Project has achieved the level of new full-time jobs specified in its Agreement.
  - 2) The Project has achieved the level of annual payroll in Illinois specified in its Agreement.
  - 3) The Project has achieved the level of capital investment in Illinois specified in its Agreement.
- d) Upon receipt of valid proof from the Taxpayer, the Department shall provide the Taxpayer with a Certificate of Verification.

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- e) A Taxpayer claiming a Credit under the Act shall submit to the Department of Revenue a copy of the Director's certificate of verification under the Act for the taxable year. However, failure to submit a copy of the certificate with the Taxpayer's tax return shall not invalidate a claim for a Credit. [35 ILCS 10/5-55]

## Section 527.100 Noncompliance with the Agreement

## EMERGENCY

- a) If the Department determines that a Taxpayer who has received a Credit under the Act is not complying with the requirements of the Agreement or all of the provisions of the Act, the Director shall provide notice to the Taxpayer of the alleged noncompliance, and allow the Taxpayer a hearing under the provisions of the Illinois Administrative Procedure Act [5 ILCS 100]. If, after notice and any hearing, the Director determines that a noncompliance exists, the Director shall issue to the Department of Revenue notice to that effect, stating the Noncompliance Date. [35 ILCS 10/5-65] Alleged noncompliance shall include:
  - 1) demonstration that the Taxpayer would have placed in service the capital investment and created or retained the requisite number of New Employee jobs without the benefits of certification. Proof of this shall include, but is not limited to, correspondence, financial plans and prospectuses, internal memoranda and other written documentation demonstrating the Taxpayer would have taken the actions without the designation.
  - 2) demonstration that the Taxpayer failed materially to comply with the terms and conditions of the Agreement.
  - 3) a determination upon investigation that the business falsified application information in violation of 14 Ill. Adm. Code 520.730(f).
- b) The Department shall notify a Taxpayer in writing that it is subject to revocation. Such notice shall include the reason for revocation and the date and location of a hearing to be held pursuant to 47 Ill. Adm. Code 10 (Review and Appeal Procedures).
- c) Following revocation the Department will contact the Director of the Illinois Department of Revenue who shall begin proceedings to recover wrongfully exempted State taxes.

## Section 527.110 Fees

## EMERGENCY

- a) An Applicant shall submit a \$500 non-refundable application fee to the Department at the time of the submission of the Tax Credit application. These fees shall be utilized to cover the administrative costs of the Tax Credit program as incurred by the Department.
- b) Fees may be waived by the Department upon a recommendation of the Committee and approval by the Director of the Department.

## DEPARTMENT OF HUMAN SERVICES

## NOTICE OF EMERGENCY AMENDMENTS

- 1) Heading of the Part: Child Care
- 2) Code Citation: 89 Ill. Adm. Code 50
- 3) Section Numbers: Emergency Action:  
50.230 Amendment
- 4) Statutory Authority: Implementing Articles I through IX and authorized by Section 12-13 of the Illinois Public Aid Code [305 ILCS 5/Arts. I through IX and 12-13] and P.A. 91-0509.
- 5) Effective Date of Amendments: August 20, 1999
- 6) If these emergency amendments are to expire before the end of the 150-day period, please specify the date on which they are to expire: Not applicable
- 7) Date filed with the Index Department: August 20, 1999
- 8) A copy of the adopted amendments, including any material incorporated by reference, is on file in the agency's principal office and is available for public inspection.

9) Reason for Emergency: Recognizing that implementation of this rulemaking as promptly as possible will serve the public interest, the Department has determined that the use of emergency rulemaking is justified. These amendments will benefit persons as described in the rulemaking and will aid in their well-being by making child care more accessible to them. Since any unnecessary delay would be harmful to those clients who will be eligible for this expanded child care eligibility, the Department believes that the changes in this rulemaking need to be in place sooner than the normal rulemaking process would allow.

10) A Complete Description of the Subject and Issues: Pursuant to provisions of P.A. 91-0509, these proposed amendments expand the criteria for non-TANF families to receive a child care subsidy while participating in education or training.

11) Are there any other amendments pending on this Part? No

12) Statement of Statewide Policy Objectives (if applicable): This rulemaking does not create or expand a State mandate.

13) Information and questions regarding these amendments shall be directed to:

Ms. Susan Weir, Bureau Chief  
Bureau of Administrative Rules and Procedures  
Department of Human Services

## DEPARTMENT OF HUMAN SERVICES

## NOTICE OF EMERGENCY AMENDMENTS

100 South Grand Avenue East  
3rd Floor Harris Bldg.  
Springfield Illinois 62762  
(217) 785-9772

If because of physical disability you are unable to put comments into writing, you may make them orally to the person listed above.

The full text of the Emergency Amendments begins on the next page.



DEPARTMENT OF HUMAN SERVICES  
NOTICE OF EMERGENCY AMENDMENTS

TITLE 89: SOCIAL SERVICES  
CHAPTER IV: DEPARTMENT OF HUMAN SERVICES  
SUBCHAPTER a: GENERAL PROGRAM PROVISIONS

PART 50  
CHILD CARE

SUBPART A: GENERAL PROVISIONS

- Section  
50.101 Incorporation by Reference  
50.110 Participant Rights and Responsibilities  
50.120 Notification of Available Services  
50.130 Child Care Overpayments and Recoveries

SUBPART B: APPLICABILITY

- Section  
50.210 Child Care  
50.220 Method of Providing Child Care  
50.230 Child Care Eligibility  
50.235 Income Eligibility Criteria  
50.240 Qualified Provider  
50.250 Additional Service to Secure or Maintain Child Care

SUBPART C: PAYMENT FEES

- Section  
50.310 Fees for Child Care Services  
50.320 Maximum Annual Income and Parent Fee by Family Size, Income Level and Number of Children Receiving Care

AUTHORITY: Implementing Articles I through IX and authorized by Section 12-13 of the Illinois Public Aid Code [305 ILCS 5/Arts. I through IX and 12-13].

SOURCE: Emergency rules adopted at 21 Ill. Reg. 9502, effective July 1, 1997, for a maximum of 150 days; adopted at 21 Ill. Reg. 14961, effective November 10, 1997; emergency amendment at 22 Ill. Reg. 12816, effective July 1, 1998, for a maximum of 150 days; amended at 22 Ill. Reg. 21037, effective November 27, 1998; emergency amendment at 23 Ill. Reg. ~~10875~~, effective August 20, 1999, for maximum of 150 days.

SUBPART B: APPLICABILITY

- Section 50.230 Child Care Eligibility  
EMERGENCY

DEPARTMENT OF HUMAN SERVICES  
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- a) Child care services are restricted to children under age 13 and to children under age 20 who are under court supervision or have physical or mental incapacities as documented by a statement from a local health provider or other health professional.  
b) Parents and other relatives eligible to receive child care services include:  
1) Recipients of Temporary Assistance for Needy Families (TANF) under Article IV of the Public Aid Code participating in work and training activities as specified in their personal plans for employment and self-sufficiency who have been approved for child care benefits by the Department and who meet the annual income ceilings in subsection (b)(2) of this Section.  
2) Working families, including teen parents while they attend school to obtain a high school degree or its equivalent, whose annual incomes do not exceed the following amounts by family size:

Family Size	Annual Income
2	\$17,663
3	\$21,819
4	\$25,975
5	\$30,131
6	\$34,288
7	\$35,067
8	\$35,846

- 3) Subject to an annual allocation of \$7.5 million, families who do not receive TANF and need child care services in order to attend school or training (up to and including the acquisition of a Bachelor's Degree) and whose annual income does not exceed the annual income ceilings in subsection (b)(2) of this Section. Qualifying families are eligible to receive child care services needed to attend literacy and other adult basic education, English as a Second Language, GED preparation, and vocational training for up to 24 non-consecutive months with no work requirement, after which they must work a monthly average of at least 20 hours per week in paid employment. Child care provided to a teen parent to obtain a high school degree, or its equivalent, does not count against this 24-month limit. Qualifying families are eligible to receive child care services to attend a 2 or 4 year college degree program if they work a monthly average of a least 10 hours per week in paid employment or a monthly average of at least 20 hours per week in a combination of paid employment and unpaid, educationally-required work activities such as student teaching, an internship, a clinical, a practicum or an apprenticeship. Child care services shall be available during time periods that are reasonably related to the paid work, self-employment and

## DEPARTMENT OF HUMAN SERVICES

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education or training activity, including class hours and research, laboratory, library and transportation time. Families with a work requirement shall receive the same grace periods between jobs as persons who receive services pursuant to subsection (b)(2) of this Section. If a parent is claimed as a dependent by another person for federal income tax purposes, that parent is only eligible if his or her income when added to the income of the other person does not exceed the annual income ceiling in subsection (b)(2) of this Section for that family size. Enrollment for child care under this subsection (b)(3) will be stopped when the projected annual costs for enrolled participants reaches \$7.5 million. Subject to an annual allocation of \$7.5 million, families who do not receive TANF and need child-care services in order to attend school--up to and including the acquisition of a Bachelor's degree--and whose annual incomes do not exceed the annual income ceilings in subsection (b)(3) of this Section--provided the parent works 25 hours per week in a paying job--Effective October 1, 1999,--the parent must work 30 hours per week in a paying job. No parent can receive more than two years of service under this subsection including any child-care received for training under the grandfathered provision during FY1998. Child care provided to a teen parent to obtain a high school degree or its equivalent does not count against this two-year limit. Eligibility for child-care under this subsection ceases for any month in which the parent does not work 25 hours per week in a paying job. Effective October 1, 1999, eligibility for child-care under this subsection ceases for any month in which the parent does not work 30 hours per week in a paying job--if a parent is claimed as a dependent by another person for federal income tax purposes, that parent is only eligible if his or her income when added to the income of the other person does not exceed the annual income ceiling in subsection (b)(3) of this Section for that family size. Applications to receive child-care under this subsection will be denied when the projected annual costs for enrolled participants reaches \$7.5 million.

c) All families must be residents of Illinois.

d) Payment for child care services to eligible parents may begin on the first day of the month before the month in which the application is received by the Department or its agents.

e) Eligibility ceases 10 calendar days from the date of the termination notice sent to the parent by the Department or its agents following a determination of ineligibility.

(Source: Amended by emergency rulemaking at 23 Ill. Reg. 10875, effective August 20, 1999, for a maximum of 150 days)

## DEPARTMENT OF AGRICULTURE

## NOTICE OF PEREMPTORY AMENDMENTS

- 1) Heading of the Part: Meat and Poultry Inspection Act
- 2) Code Citation: 8 Ill. Adm. Code 125
- 3) Section Numbers: Peremptory Action:  
125.270 Amended  
125.280
- 4) Reference to the Specific State or Federal Court Order, Federal Rule or Statute which Requires this Peremptory Rulemaking: The Meat and Poultry Inspection Act [225 ILCS 650]; the Federal Meat Inspection Act (21 USCA 661); and 64 FR 27901.
- 5) Statutory Authority: The Meat and Poultry Inspection Act [225 ILCS 650].
- 6) Effective Date: August 19, 1999
- 7) A Complete Description of the Subjects and Issues Involved: In order to maintain an "equal to" status with the federal meat inspection program as required by the Federal Meat Inspection Act, and in accordance with Section 16 of the Meat and Poultry Inspection Act, the Department is adopting amendments to the federal meat inspection rules.  
  
The Food Safety and Inspection Service (FSIS) is amending the federal meat inspection regulations to allow the use of soy protein concentrate, both singly and in combination with modified food starch or carrageenan, as a binder in cured pork products labeled "Ham with Natural Juices," "Ham Water Added," and "Ham and Water Product--X# of Weight is Added Ingredients," and to increase the permitted use level of modified food starch as a binder in "Ham and Water Product--X# of Weight is Added Ingredients" products. The specific federal regulations being amended are 9 CFR Parts 318.7(c)(4) and 319.104(d) effective July 23, 1999. The amendment appears at 64 FR 27901 (May 24, 1999).
- 8) A copy of the adopted amendment, including any material incorporated by reference, is on file in the agency's principal office and is available for public inspection.
- 9) Date Filed with the Index Department: August 18, 1999
- 10) Does this rulemaking contain an automatic repeal date: No
- 11) This rule is in compliance with Section 5-50 of the Illinois Administrative Procedure Act.
- 12) Are there any proposed amendments pending to this Part: No
- 13) Statement of Statewide Policy Objectives: This rulemaking does not affect

## DEPARTMENT OF AGRICULTURE

## NOTICE OF PEREMPTORY AMENDMENTS

units of local governments.

- 14) Information and questions regarding this peremptory amendment shall be directed to:

Linda Rhodes  
Illinois Department of Agriculture  
State Fairgrounds, P.O. Box 19281  
Springfield, Illinois 62794-9281  
217/785-5713  
Fax: 217/785-4505

The full text of the peremptory amendment begins on the next page:

## DEPARTMENT OF AGRICULTURE

## NOTICE OF PEREMPTORY AMENDMENTS

TITLE 8: AGRICULTURE AND ANIMALS  
CHAPTER I: DEPARTMENT OF AGRICULTURE  
SUBCHAPTER c: MEAT AND POULTRY INSPECTION ACT

## PART 125

## MEAT AND POULTRY INSPECTION ACT

SUBPART A: GENERAL PROVISIONS FOR BOTH MEAT AND/OR  
POULTRY INSPECTION

Section	
125.10	Definitions
125.20	Incorporation by Reference of Federal Rules
125.30	Application for License; Approval
125.40	Official Number
125.50	Inspections; Suspension or Revocation of License
125.60	Administrative Hearings; Appeals (Repealed)
125.70	Assignment and Authority of Program Employees
125.80	Schedule of Operations; Overtime
125.90	Official Marks of Inspection, Devices and Certificates
125.100	Records and Reports
125.110	Exemptions
125.120	Disposal of Dead Animals and Poultry
125.130	Reportable Animal and Poultry Diseases
125.140	Detention; Seizure; Condemnation
125.141	Sanitation Standard Operating Procedures (SOP's)
125.142	Hazard Analysis and Critical Control Point (HACCP) Systems
125.143	Imported Products

## SUBPART B: MEAT INSPECTION

Section	
125.150	Livestock and Meat Products Entering Official Establishments
125.160	Equine and Equine Products
125.170	Facilities for Inspection
125.180	Sanitation
125.190	Ante-Mortem Inspection
125.200	Post-Mortem Inspection
125.210	Disposal of Diseased or Otherwise Adulterated Carcasses and Parts
125.220	Humane Slaughter of Animals
125.230	Handling and Disposal of Condemned or Other Inedible Products at Official Establishment
125.240	Rendering or Other Disposal of Carcasses and Parts Passed for Cooking
125.250	Marking Products and Their Containers
125.260	Labeling, Marking and Containers
125.270	Entry into Official Establishment; Reinspection and Preparation of Product
125.280	Meat Definitions and Standards of Identity or Composition

DEPARTMENT OF AGRICULTURE  
NOTICE OF PERMPTORY AMENDMENTS

125-290 Transportation  
125-295 Imported Products (Repealed)  
125-300 Special Services Relating to Meat and Other Products  
125-305 Exotic Animal Inspection

SUBPART C: POULTRY INSPECTION

Section  
125-310 Application of Inspection  
125-320 Facilities for Inspection  
125-330 Sanitation  
125-340 Operating Procedures  
125-350 Ante-Mortem Inspection  
125-360 Post-Mortem Inspection; Disposition of Carcasses and Parts  
125-370 Handling and Disposal of Condemed or Inedible Products at Official Establishments  
125-380 Labeling and Containers  
125-390 Entry of Articles Into Official Establishments; Processing Inspection and Other Reinspections; Processing Requirements  
125-400 Definitions and Standards of Identity or Composition  
125-410 Transportation; Sale of Poultry or Poultry Products

AUTHORITY: Implementing and authorized by the Meat and Poultry Inspection Act [225 ILCS 650] and Section 16 of the Civil Administrative Code of Illinois [20 ILCS 5/16].

SOURCE: Adopted at 9 Ill. Reg. 1782, effective January 24, 1985; peremptory amendment at 9 Ill. Reg. 2337, effective January 28, 1985; peremptory amendment at 9 Ill. Reg. 2980, effective February 20, 1985; peremptory amendment at 9 Ill. Reg. 4856, effective April 1, 1985; peremptory amendment at 9 Ill. Reg. 9240, effective June 5, 1985; peremptory amendment at 9 Ill. Reg. 10102, effective June 13, 1985; peremptory amendment at 9 Ill. Reg. 11673, effective July 17, 1985; peremptory amendment at 9 Ill. Reg. 13748, effective August 23, 1985; peremptory amendment at 9 Ill. Reg. 15575, effective October 2, 1985; peremptory amendment at 10 Ill. Reg. 19759, effective December 5, 1985; peremptory amendment at 10 Ill. Reg. 447, effective December 23, 1985; peremptory amendment at 10 Ill. Reg. 1307, effective January 7, 1986; peremptory amendment at 10 Ill. Reg. 3318, effective January 24, 1986; peremptory amendment at 10 Ill. Reg. 3880, effective February 7, 1986; peremptory amendment at 10 Ill. Reg. 11478, effective June 25, 1986; peremptory amendment at 10 Ill. Reg. 14858, effective August 22, 1986; peremptory amendment at 10 Ill. Reg. 15305, effective September 10, 1986; peremptory amendment at 10 Ill. Reg. 16743, effective September 19, 1986; peremptory amendment at 10 Ill. Reg. 18203, effective October 15, 1986; peremptory amendment at 11 Ill. Reg. 19818, effective November 12, 1986; peremptory amendment at 11 Ill. Reg. 1696, effective January 5, 1987; peremptory amendment at 11 Ill. Reg. 2930, effective January 23, 1987; peremptory amendment at 11 Ill. Reg. 3645, effective April 29, 1987; peremptory amendment at 11 Ill. Reg.

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10321, effective May 15, 1987; peremptory amendment at 11 Ill. Reg. 11184, effective June 5, 1987; peremptory amendment at 11 Ill. Reg. 14830, effective August 25, 1987; peremptory amendment at 11 Ill. Reg. 18799, effective November 3, 1987; peremptory amendment at 11 Ill. Reg. 19805, effective November 13, 1987; peremptory amendment at 12 Ill. Reg. 2154, effective January 6, 1988; amended at 12 Ill. Reg. 3417, effective January 22, 1988; peremptory amendment at 12 Ill. Reg. 4879, effective February 25, 1988; peremptory amendment at 12 Ill. Reg. 6313, effective March 21, 1988; peremptory amendment at 12 Ill. Reg. 13621, 6819, effective March 29, 1988; peremptory amendment at 12 Ill. Reg. 13621, effective August 8, 1988; peremptory amendment at 12 Ill. Reg. 19116, effective November 1, 1988; peremptory amendment at 12 Ill. Reg. 20894, effective December 21, 1988; peremptory amendment at 13 Ill. Reg. 228, effective January 13, 1989; peremptory amendment at 13 Ill. Reg. 2160, effective February 13, 1989; amended at 13 Ill. Reg. 3696, effective March 13, 1989; peremptory amendment at 13 Ill. Reg. 15853, effective October 5, 1989; peremptory amendment at 13 Ill. Reg. 16838, effective October 11, 1989; peremptory amendment at 13 Ill. Reg. 17495, effective January 19, 1990; amended at 14 Ill. Reg. 3424, effective February 23, 1990; peremptory amendment at 14 Ill. Reg. 14401, effective July 6, 1990; peremptory amendment at 14 Ill. Reg. 13355, effective August 20, 1990; peremptory amendment at 14 Ill. Reg. 16064, effective September 24, 1990; peremptory amendment at 14 Ill. Reg. 21060, effective May 29, 1991; peremptory amendment at 15 Ill. Reg. 620, effective January 2, 1991; peremptory amendment withdrawn at 15 Ill. Reg. 1574, effective January 2, 1991; peremptory amendment at 15 Ill. Reg. 3117, effective September 3, 1991; peremptory amendment at 15 Ill. Reg. 8714, effective May 29, 1991; amended at 15 Ill. Reg. 8801, effective June 7, 1991; peremptory amendment at 15 Ill. Reg. 13976, effective September 20, 1991; peremptory amendment at 16 Ill. Reg. 1899, effective March 2, 1992; amended at 16 Ill. Reg. 8349, effective May 26, 1992; peremptory amendment at 16 Ill. Reg. 11687, effective July 10, 1992; peremptory amendment at 16 Ill. Reg. 11963, effective July 22, 1992; peremptory amendment at 16 Ill. Reg. 12234, effective July 24, 1992; peremptory amendment at 16 Ill. Reg. 16337, effective October 19, 1992; peremptory amendment at 16 Ill. Reg. 17165, effective October 21, 1992; peremptory amendment at 17 Ill. Reg. 2063, effective February 12, 1993; peremptory amendment at 17 Ill. Reg. 15725, effective September 8, 1993; peremptory amendment at 17 Ill. Reg. 18215, effective September 8, 1993; peremptory amendment at 18 Ill. Reg. 304, effective December 23, 1993; peremptory amendment at 18 Ill. Reg. 2164, effective January 24, 1994; amended at 18 Ill. Reg. 4622, effective March 14, 1994; peremptory amendment at 18 Ill. Reg. 6442, effective April 18, 1994; peremptory amendment at 18 Ill. Reg. 8493, effective May 27, 1994; amended at 18 Ill. Reg. 11489, effective July 7, 1994; peremptory amendment at 18 Ill. Reg. 12546, effective September 7, 1994; amended at 18 Ill. Reg. 14475, effective September 26, 1994; peremptory amendment at 18 Ill. Reg. 14924, effective September 26, 1994; peremptory amendment at 18 Ill. Reg. 15452, effective September 27, 1994; peremptory amendment at 19 Ill. Reg. 1342, effective January 27, 1995; peremptory amendment at 19 Ill. Reg. 4765, effective March 13, 1995; peremptory



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amendment at 19 Ill. Reg. 7067, effective May 8, 1995; peremptory amendment at 19 Ill. Reg. 14896, effective October 6, 1995; peremptory amendment at 19 Ill. Reg. 15766, effective November 10, 1995; peremptory amendment at 19 Ill. Reg. 16866, effective December 22, 1995; peremptory amendment at 20 Ill. Reg. 5091, effective March 19, 1996; peremptory amendment at 20 Ill. Reg. 10403, effective July 17, 1996; amended at 20 Ill. Reg. 11928, effective September 1, 1996; peremptory amendment at 20 Ill. Reg. 12634, effective September 5, 1996; peremptory amendment at 20 Ill. Reg. 15371, effective November 13, 1996; peremptory amendment at 21 Ill. Reg. 1221, effective January 14, 1997; peremptory amendment at 21 Ill. Reg. 1719, effective January 28, 1997; peremptory amendment at 21 Ill. Reg. 6609, effective May 20, 1997; amended at 21 Ill. Reg. 11494, effective August 1, 1997; peremptory amendment at 21 Ill. Reg. 11788, effective August 8, 1997; peremptory amendment at 21 Ill. Reg. 12686, effective August 28, 1997; peremptory amendment at 21 Ill. Reg. 14575, effective October 22, 1997; peremptory amendment at 22 Ill. Reg. 3602, effective February 2, 1998; peremptory amendment at 22 Ill. Reg. 5740, effective March 5, 1998; peremptory amendment at 22 Ill. Reg. 9384, effective May 15, 1998; peremptory amendment at 22 Ill. Reg. 20645, effective November 16, 1998; peremptory amendment at 23 Ill. Reg. 450, effective January 1, 1999; peremptory amendment at 23 Ill. Reg. 3851, effective March 11, 1999; peremptory amendment at 23 Ill. Reg. ~~10880~~, effective March 19, 1999.

## SUBPART B: MEAT INSPECTION

## Section 125.270 Entry into Official Establishment; Reinspection and Preparation of Product

- a) The Department incorporates by reference 9 CFR 318.1(c) through 318.7, 318.9 through 318.10, 318.14 through 318.20, 318.22, 318.23, 318.24, 318.300 through 318.311 (1997); 61 FR 58780, effective January 21, 1997; 62 FR 27940, effective July 21, 1997; 62 FR 33744, effective August 22, 1997; 62 FR 45016, effective September 24, 1997; 62 FR 43631, effective October 14, 1997; 62 FR 61619, effective January 20, 1998; 64 FR 732, effective March 8, 1999; 64 FR 27901, effective July 23, 1999.
- b) No meat or meat product shall be brought into an official establishment unless it is inspected or has been prepared in an official establishment or in a federally licensed establishment and is identified by an official inspection legend as set forth in Section 125.90, a federal inspection legend, or is exempt from inspection as stated in Section 125.110. Meat and meat products received in an official establishment during the absence of the inspector shall be identified as set forth in Section 125.200 and, unless exempt from inspection, shall not be used or prepared until they have been reinspected. Any meat and meat product originally prepared at any official establishment may not be returned to any part of such establishment other than the receiving area until it has been reinspected by the inspector and passed. Wild game carcasses shall

## DEPARTMENT OF AGRICULTURE

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- comply with Section 5(B)(4) of the Act. The official establishment shall maintain an inventory of non-meat items (e.g., spices, preservatives) which are received at the official establishment. Any product that is brought on the premises of an official establishment contrary to the provisions of this Section shall be removed immediately from such establishment by the operator of the establishment.
- c) Reinspections of meat and/or meat products within the official establishment shall be performed through the use of a random digit table.
- d) Docks and receiving rooms for meat and/or meat products or other articles used by the establishment in the preparation of meat products entering an official establishment shall be approved by the inspector if the location of such docks or receiving rooms will not permit such product or article to pass through rooms containing inspected and passed products.
- e) The manner of defrosting frozen products and methods of treating to preserve products shall be in accordance with procedures as set forth in the "Meat and Poultry Inspection Manual" as adopted in Section 125.20.
- f) Casings or weasand shall be inspected and passed if it is in compliance with the specific provisions as stated in 9 CFR 318.5(i) for passage of such articles.
- g) The Department does not approve new substances to be used on meat or in meat products, their uses or the levels of use of an approved substance. Such substances will be permitted to be used and artificial flavorings may be used if they do not adulterate the meat and/or meat product in accordance with Section 2.11 of the Act and are in compliance with the provisions of this Section.
- h) References to exemptions from slaughter and custom slaughter shall mean those exemptions set forth in Section 125.110.
- i) References within the incorporated language to the Federal Poultry Inspection Act, Section 403 of the Act, Section 7 of the Act, 9 CFR 303, and paragraph 23(a) of the Act shall be interpreted to mean in accordance with the Meat and Poultry Inspection Act and the rules of this Part.
- j) The Department does not approve thermometers for use in smokehouses, dry rooms and other compartments that are used in the treatment of pork.
- k) Disinfectants shall be those as set forth in Section 125.180.
- l) Adequate vacuum shall be determined through the use of vacuum gauges.
- m) Canned products which may be processed without steampressure cooking shall be those products as stated in the "Meat and Poultry Inspection Manual" as adopted by the Department in Section 125.20.
- n) The inspector shall permit lots of canned product to be shipped from the official establishment prior to the completion of the incubation period on the representative samples in accordance with the specific provisions in 9 CFR 318.309.

## DEPARTMENT OF AGRICULTURE

## NOTICE OF PEREMPTORY AMENDMENTS

- o) The standards and procedures for determining when ingredients of finished products are in compliance with this Section shall be as set forth in the "Meat and Poultry Inspection Manual" as adopted by the Department in Section 125.20.

(Source: Peremptory amendment at 23 Ill. Reg. 10880, effective August 19, 1999)

## Section 125.280 Meat Definitions and Standards of Identity or Composition

The Department incorporates by reference 9 CFR 319 (1997; 62 FR 45016, effective September 24, 1997; 63 FR 147, effective March 6, 1998; 64 FR 27901, effective July 23, 1999). Methods for the destruction of live trichinae in pork shall be as set forth in Section 125.270 (specifically the incorporated language of 9 CFR 318.10(c)).

(Source: Peremptory amendment at 23 Ill. Reg. 10880, effective August 19, 1999)

## STATE BOARD OF EDUCATION

## NOTICE OF PUBLIC HEARINGS ON PROPOSED RULES

- 1) Heading of the Part: Special Education  
 2) Code Citation: 23 Ill. Adm. Code 226  
 3) Register Citation to Notice of Proposed Rules: 23 Ill. Reg. 10693  
 September 3, 1999

## 4) Dates and Locations of Public Hearings:

Tuesday, October 5, 1999  
 5:00 - 9:00 p.m.  
 Belleville Area Special Services  
 Cooperative (BASSC)  
 2411 Pathways Crossing (Conf. Room)  
 Belleville, Illinois

Tuesday, October 12, 1999  
 5:00 - 9:00 p.m.  
 LaSalle/Futnum Co. Educ. Alliance  
 for Special Ed (LEASE)  
 1009 Boyce Memorial Drive  
 Ottawa, Illinois

Thursday, October 21, 1999  
 1:00 - 5:00 p.m.  
 James R. Thompson Center, Rm. 025  
 100 West Randolph St. (2nd Floor)  
 Chicago, Illinois

Wednesday, October 6, 1999  
 5:00 - 9:00 p.m.  
 John A. Logan Comm. College  
 700 College Rd. (Beateau Room)  
 Carterville, Illinois

Wednesday, October 20, 1999  
 5:00 - 9:00 p.m.  
 Monroe Middle School  
 1855 Manchester Road  
 Wheaton, Illinois

Tuesday, October 26, 1999  
 5:00 - 9:00 p.m.  
 State Board of Education Office  
 100 North 1st St. (4th Floor)  
 Springfield, Illinois

- 5) Other Pertinent Information: The services of a sign language interpreter will be available if requested. To request an interpreter for a specific hearing, interested parties may call 217/782-5589. Those presenting testimony are requested to supply written copies of their remarks also, if possible.

## DEPARTMENT OF LABOR

## NOTICE OF PUBLIC INFORMATION

CONTRACTOR PROHIBITED FROM AN AWARD  
OF A CONTRACT OR A SUBCONTRACT  
FOR PUBLIC WORKS PROJECTS

Pursuant to section 11a of the Prevailing Wage Act, 820 ILCS 130/0.01-12 (1998), the Director of the Department of Labor gives notice that Per Mar Security and Research Corporation, d/b/a Per Mar Security Services [hereinafter, "Per Mar"], 1910 East Kimberly Road, P.O. Box 4227, Davenport, Iowa, 52808-4227, has been found to have disregarded its obligations to employees under the Prevailing Wage Act on two (2) separate occasions and that Per Mar, its officers, agents, and all persons acting in Per Mar's behalf and interest, and any firm, corporation, partnership or association in which Per Mar, its officers, agents, and all persons acting in Per Mar's behalf and interest, have an interest, are prohibited from being awarded any contract or subcontract for a public works project until September 2, 2001.

Copies of the Prevailing Wage Act are available on the internet at <<http://www.legis.state.il.us/ilcs/ilcs/ch820/ch820act130.htm>>, and at the:

Illinois Department of Labor  
Conciliation and Mediation Division  
One West Old State Capital Plaza, Room 300  
Springfield, Illinois 62701-1217

## DEPARTMENT OF PUBLIC AID

AGENCY RESPONSE TO JOINT COMMITTEE  
RECOMMENDATION ON PROPOSED RULEMAKING

- 1) Heading of the Part: Hospital Services
- 2) Code Citation: 89 Ill. Adm. Code 148
- 3) Section Number: Proposed Action:  
148.297  
Amendment
- 4) Notice of Proposed Amendments Published in the Illinois Register: January 22, 1999 (23 Ill. Reg. 847)
- 5) JCAR Statement of Recommendation on Proposed Rulemaking Published in the Illinois Register: June 4, 1999 (23 Ill. Reg. 6921)
- 6) Summary of Action Taken by the Agency:

At its meeting on May 18, 1999, the Joint Committee on Administrative Rules issued a recommendation concerning the Department's amendments to "Hospital Services" (89 Ill. Adm. Code 148) that were proposed on January 22, 1999, and appeared in the Illinois Register at 23 Ill. Reg. 847. The Joint Committee specifically addressed the Department's action to correct errors at 89 Ill. Adm. Code 148.297 and recommended that the Department make a more conscientious effort to timely adopt rule amendments to avoid implementing policy not in rule. The general nature of the Joint Committee's recommendation is understood and the Department strives in its rulemaking practices to insure that adoption precedes implementation.

The proposed amendments that are the focus of the Joint Committee's recommendation were necessary to correct two errors affecting the calculation methodology for pediatric outpatient adjustment payments that were adopted on November 25, 1998, for dates of services occurring on or after January 1, 1999. However, payments for these services were always made in the proper amounts through utilization of the correct rate calculation methodology. Therefore, the Department chose to undertake correction of the errors adopted at 89 Ill. Adm. Code 148.297 by way of general rulemaking, rather than emergency rulemaking or expedited correction, because in the Department's view, the conditions for the latter rulemaking processes were not met. General rulemaking was also chosen because it offers the most expedient method for serving public notice considerations through publication in the Illinois Register.

The Department believes that the corrective action taken in response to the errors adopted at 89 Ill. Adm. Code 148.297 on November 25, 1998, was appropriate. However, the Department is in full agreement with the Joint Committee regarding timely adoption of amendments to avoid implementing policy not in rule, and the Department will continue to make a conscientious effort to insure the requirement is met in its rulemaking activities.

JOINT COMMITTEE ON ADMINISTRATIVE RULES  
ILLINOIS GENERAL ASSEMBLYSTATEMENT OF OBJECTION TO  
EMERGENCY RULEMAKING

## DEPARTMENT OF HUMAN SERVICES

Heading of the Part: Aid to the Aged, Blind or DisabledCode Citation: 89 Ill Adm Code 113Section Numbers: 113.157 113.260Date Originally Published in the Illinois Register: 7/30/99  
23 Ill Reg 8650

At its meeting on August 17, 1999, the Joint Committee on Administrative Rules objected to the Department of Human Services' use of emergency rulemaking to adopt amendments to 89 Ill Adm Code 113 (23 Ill Reg 8650) changing the income standard used in specific AABD determinations because the agency has failed to prove that any situation exists that required that these changes be adopted without the public notice and public comment period provided by regular rulemaking.

Failure of the agency to respond within 90 days after receipt of the Statement of Objection shall be deemed a refusal. The agency's response will be placed on the JCAR agenda for further consideration.

JOINT COMMITTEE ON ADMINISTRATIVE RULES  
ILLINOIS GENERAL ASSEMBLYSTATEMENT OF OBJECTION TO  
EMERGENCY RULEMAKING

## DEPARTMENT OF HUMAN SERVICES

Heading of the Part: General AssistanceCode Citation: 89 Ill Adm Code 114Section Numbers: 114.408Date Originally Published in the Illinois Register: 7/30/99  
23 Ill Reg 8661

At its meeting on August 17, 1999, the Joint Committee on Administrative Rules objected to the Department of Human Services' use of emergency rulemaking to adopt amendments to 89 Ill Adm Code 114 (23 Ill Reg 8661) changing the income standard used in specific GA determinations because the agency has failed to prove that any situation exists that required that these changes be adopted without the public notice and public comment period provided by regular rulemaking.

Failure of the agency to respond within 90 days after receipt of the Statement of Objection shall be deemed a refusal. The agency's response will be placed on the JCAR agenda for further consideration.



JOINT COMMITTEE ON ADMINISTRATIVE RULES  
ILLINOIS GENERAL ASSEMBLY

STATEMENT OF OBJECTION TO  
EMERGENCY RULEMAKING

DEPARTMENT OF HUMAN SERVICES

Heading of the Part: Subacute Alcoholism and Substance Abuse Treatment Services

Code Citation: 77 Ill Adm Code 2090

Section Numbers: 2090.35

Date Originally Published in the Illinois Register: 8/6/99  
23 Ill Reg 8832

At its meeting on August 17, 1999, the Joint Committee on Administrative Rules objected to Section 2090.35 of the emergency rules of the Department of Human Services entitled Subacute Alcoholism and Substance Abuse Treatment Services because the Department is removing criteria that sets out the information that is being collected through DARTS and confidentiality provisions.

Failure of the agency to respond within 90 days after receipt of the Statement of Objection shall be deemed a refusal. The agency's response will be placed on the JCAR agenda for further consideration.

JOINT COMMITTEE ON ADMINISTRATIVE RULES  
ILLINOIS GENERAL ASSEMBLY

STATEMENT OF OBJECTION TO  
EMERGENCY RULEMAKING

DEPARTMENT OF HUMAN SERVICES

Heading of the Part: Temporary Assistance for Needy Families

Code Citation: 89 Ill Adm Code 112

Section Numbers: 112.101 112.130 112.307 112.308

Date Originally Published in the Illinois Register: 7/30/99  
23 Ill Reg 8672

At its meeting on August 17, 1999, the Joint Committee on Administrative Rules objected to the Department of Human Services' use of emergency rulemaking to adopt amendments to 89 Ill Adm Code 112 (23 Ill Reg 8672) changing the income standard used in specific TANF determinations because the agency has failed to prove that any situation exists that required that these changes be adopted without the public notice and public comment period provided by regular rulemaking.

Failure of the agency to respond within 90 days after receipt of the Statement of Objection shall be deemed a refusal. The agency's response will be placed on the JCAR agenda for further consideration.

JOINT COMMITTEE ON ADMINISTRATIVE RULES  
ILLINOIS GENERAL ASSEMBLY

SECOND NOTICES RECEIVED

The following second notices were received by the Joint Committee on Administrative Rules during the period of August 17, 1999 through August 22, 1999 and have been scheduled for review by the Committee at its September 14, 1999 meeting in Chicago. Other items not contained in this published list may also be considered. Members of the public wishing to express their views with respect to a rule should submit written comments to the Committee at the following address: Joint Committee on Administrative Rules, 700 Stratton Bldg., Springfield IL 62706.

<u>Second Notice Expires</u>	<u>Agency and Rule</u>	<u>Start Of First Notice</u>	<u>JCAR Meeting</u>
10/2/99	Department of Human Services, Assessment for Determining Eligibility and Rehabilitation Needs (89 111 Adm Code 553)	5/28/99 23 111 Reg 6200	9/14/99
10/2/99	Department of Public Health, Programs (77 111 Adm Code 280)	6/4/99 23 111 Reg 5746	9/14/99

Rules acted upon during the calendar quarter from Issue 30 through Issue 42 are listed in the Issues Index by Title and Number, Part number and Issue number. For example, 50 III. Adm. Code 2500 published in Issue 1 will be listed as 50-2500-1. The letter "R" designates a rule that is being repealed. Inquiries about the Issues Index may be directed to the Administrative Code Division at 217-782-4414 or [inats@ccdc.state.il.us](mailto:inats@ccdc.state.il.us) (Internet address).

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## Illinois Administrative Code

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